No. 4680

United States

Circuit Court of Appeals

For the Ninth Circuit.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Plaintiff in Error,

vs.

MABEL SIMPSON, and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian *ad Litem*,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the District of Oregon.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

W. LAIR THOMPSON and RALPH H. KING, Northwestern Bank Building, Portland, Oregon,
For the Plaintiff in Error.

WILLIAM P. LORD and ARTHUR I. MOULTON, Spalding Building, Portland, Oregon,
For the Defendants in Error.

In the District Court of the United States for the District of Oregon.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

CITATION ON WRIT OF ERROR.

United States of America.

To Mabel Simpson, Wayne Dean Simpson, Earl Simpson and Joyce Simpson, GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to he holden in the city of San Francisco, California, in said cir-

cuit, on the 23 day of August next, pursuant to the writ of error filed in the clerk's office of the District Court of the United States for the District of Oregon, wherein Oregon-American Lumber Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable R. S. BEAN, District *Court* of the United States, at Portland, Oregon, within said circuit, this 24 day of July, A. D. 1925.

R. S. BEAN,
United States District Judge. [1*]

District of Oregon,
State of Oregon,
County of Multnomah,—ss.

Service of the foregoing citation is hereby admitted by the receipt within the district, state and county aforesaid of a duly certified copy this 24 day of July, A. D. 1925.

WM. P. LORD,
One of Attorneys for Plaintiffs. [2]

[Endorsed]: No. L.–9520. 36–62. In the District Court of the United States for the District of Oregon. Mabel Simpson et al., Plaintiffs, vs. Oregon-American Lumber Company, Defendant. Citation. U. S. District Court, District of Oregon. Filed Jul. 24, 1925. G. H. Marsh, Clerk. [3]

*Page-number appearing at foot of page of original certified Transcript of Record.

In the United States Circuit Court of Appeals for the Ninth Circuit.

MABEL SIMPSON, WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

WRIT OF ERROR.

The United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States, to the Honorable Judges of the District Court of the United States for the District of Oregon, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court before you, or some of you, between Mabel Simpson and Wayne Dean Simpson, Earl Simpson and Joyce Simpson, by Mabel Simpson, their guardian *ad litem,* plaintiffs, and Oregon-American Lumber Company, defendant, a manifest error hath happened, to the great damage of the said Oregon-American Lumber Company, defendant, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do

command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, California, [4] in said circuit, on the 23d day of August next in the said Circuit Court of Appeals, to be then and there held, that the records and proceedings aforesaid being inspected by said Circuit Court of Appeals, may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 24th day of July, A. D. 1925, and in the 150th year of the Independence of the United States of America.

[Seal] Attest: G. H. MARSH,
Clerk of the District Court of the United States for District of Oregon.

Allowed by

R. S. BEAN,
United States District Judge. [5]

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit. Mabel Simpson et al., Plaintiffs, vs. Oregon-American Lumber Company, Defendant. Writ of Error. Filed July 24, 1925. G. H. Marsh, Clerk, United States District Court, District of Oregon. [6]

In the District Court of the United States for the District of Oregon.

November Term, 1924.

BE IT REMEMBERED, That on the 22d day of December, 1924, there was duly filed in the District Court of the United States for the District of Oregon, a transcript of record on removal from the Circuit Court of the State of Oregon for Columbia County, the complaint contained therein being in words and figures as follows, to wit: [7]

In the Circuit Court of the State of Oregon for the County of Columbia.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation, and TROY SMITH,

Defendants.

COMPLAINT.

Plaintiffs for cause of action, complain and allege:

I.

That during his lifetime and until the time of his death, Clyde C. Simpson was the husband of plaintiff Mabel Simpson, and was the father of plain-

tiffs Wayne Dean Simpson, Earl Simpson and Joyce Simpson; that said plaintiffs Wayne Dean Simpson, Earl Simpson and Joyce Simpson are minors under the age of fourteen years, to wit: said Wayne Dean Simpson is of the age of one year, Earl Simpson is of the age of three years, and Joyce Simpson is of the age of four years, and by order of this court, said Mabel Simpson has been appointed and has qualified and is now duly appointed, qualified and acting guardian *ad litem* of and for the said Wayne Dean Simpson, Earl Simpson and Joyce Simpson for the purpose of bringing and prosecuting this action.

II.

That defendant Oregon-American Lumber Company, a corporation is now and during all the times herein mentioned has been a corporation organized and existing under and by virtue of the laws of the State of Utah, transacting business in the State of Oregon, with its principal place of business in Oregon at Vernonia, in *in* Columbia County, Oregon, and during all of the times herein mentioned, said defendant Oregon-American Lumber Company has been engaged in the business of running a general saw and lumbering mill at Vernonia, in Columbia County, Oregon, and in and about said lumber mill it employed, during all the times herein mentioned, large numbers of men. [8]

III.

That in the operation of said mill, said defendant employed electric driven saws, rollers, gang-edgers and other machinery and devices, and all

of the work carried on by said defendant in and about said mill was extremely hazardous and dangerous, and involved great risk and danger to the employees engaged therein.

IV.

That said work being of a hazardous and dangerous character, as above set forth, and involving the operation of machinery, was carried on by the defendant lumber company at the time hereinafter mentioned, to wit: September 11, 1924, under such circumstances and conditions that defendant Oregon-American Lumber Company had the right and option under the Compensation Act of the State of Oregon to elect whether it would contribute to the fund created by said act, or whether it would refuse to contribute to said fund and reject the benefits of said Act, and prior to said time said defendant lumber company had elected to reject the benefits of said Act and refused to contribute to the fund created thereby, and by reason of such election was not entitled to any of the benefits of said Act, and was subject to all the terms and conditions of said Act regulating corporations engaged in hazardous occupations at said time who rejected the benefits of said Act.

V.

That in and about its said mill the defendant lumber company employed a certain system of live rolls used for the purpose of conveying lumber from one part of its plant to another, and a certain machine known as a gang-edger which con-

sisted of a set of saws operated on a common drum or arbor, each saw being about thirty inches in diameter and about three-eighths of an inch thick, and said saws were so arranged that when [9] large pieces of lumber were propelled against the same, said pieces would be cut at the same time by several of said saws, thereby dividing such lumber into several pieces; for the purpose of driving the lumber against said saws there were in connection with said machine certain so-called live rolls which were caused to revolve by gears driven by steam power, and the lumber to be cut by said saws was put upon said live rolls and thereupon a set of rolls not operated by gears, known as dead rolls, were lowered upon such lumber to hold the same firmly in position so that said live rolls could drive the same against said saws in a direct course; that said dead rolls were held down upon such lumber by a weight of about five hundred pounds, and said machine was equipped with an arrangement of steam operated cylinders and pistons into which steam was admitted by means of valves for the purpose of lifting said dead rolls from said lumber when necessary to admit pieces of lumber into said machine said edger-saws were driven at the rate of about 1,800 to 2,000 revolutions per minute, and were propelled with such terrific force that in the event lumber was permitted to be driven against the same in an irregular or uneven course, or to shift from side to side while being driven against the same, there was great and imminent danger that such lumber

would bind upon said saws and would thereupon be thrown by said saws to different points in and about said mill, with great danger to the employees engaged in said mill, and it was therefore necessary that the valves admitting steam into the cylinders operating said pistons be so adjusted that the same would admit steam in said pistons promptly for the raising of said dead rolls, and that when required to do so by the operator of said edger, would release the steam in said cylinders promptly and completely so as to permit the full force of the weight of said dead rolls to bear upon the lumber being sawed by said edger, so that the same might be held firmly in place and projected against said saws in an even course, [10] and not permitted to change the course at which it started against said saws, and it was likewise extremely hazardous and dangerous in the operation of said edger for the operator thereof to lift the rolls at any time while lumber was being sawed by said saws, because the lifting of such rolls would permit such lumber to bind on said saws with great imminent danger that said lumber would be thrown and propelled by said saws to other parts of the said mill, and would injure employees in said mill.

VI.

That on or about the 11th day of September, 1924, defendant lumber company employed in its said mill the defendant Troy Smith as a general mill foreman, and as such general mill foreman said defendant Troy Smith had charge of the

operation of said edger and of all of defendant lumber company's machinery in and about said mill, and had a right to control and direct the service of the employees engaged therein, and was the person in charge of the work of operating said edger and of keeping the same in repair fit for operation.

VII.

That on and prior to said 11th day of September, 1924, said defendants had carelessly and negligently and in violation of Section 6785, Oregon Laws, permitted said edger and said device for lifting said dead rolls to be out of repair and in a dangerous condition in this: that the valves admitting and releasing the steam into said cylinders for the purpose of operating said pistons to lift said dead rolls had been permitted to be and remain in such condition through some defect in the adjustment thereof which plaintiffs cannot particularly specify, but with which defendants are well acquainted, so that the same would not open and close freely, and that when the steam had [11] been admitted into said cylinders and said rolls had been lifted, and the said valves were released for the purpose of permitting said rolls to drop upon lumber being cut in said edger, the said valves would not promptly release the steam from said pistons and said rolls were thereby kept partially or completely lifted and were prevented from descending on said lumber with sufficient force to hold the same firmly in position, and cause the same to be driven against said saws in

a straight course, and such lumber was by reason thereof apt to stop while being driven against said saws and to bind upon said saws and to be thrown thereby with great force to other parts of said mill.

VIII.

That the aforesaid defective and dangerous condition of said gang-edger had, prior to the said 11th day of September, 1924, been reported to and was known to the defendant Troy Smith, but said Troy Smith, in violation of Section 6787, Oregon Laws, had neglected to see that the precaution was taken of adjusting said valves and repairing said machine so that the same would operate properly and safely, and had carelessly and negligently permitted said machine to be and remain in the dangerous condition aforesaid.

IX.

That on said 11th day of September, 1924, the above-mentioned Clyde C. Simpson was engaged in said work as an employee of said defendant in and about its said mill at a point some thirty feet distant from said gang-edger, and at the opposite end of a system of rolls leading to said gand-edger; that said work was of such a nature that he was obliged to give his undivided attention thereto and was not able to watch or observe the said gang-edger; while said deceased was engaged in his work as aforesaid, by reason of the said defective and dangerous condition of said gang-edger, a piece of lumber that was being run through said edger and was being sawed by certain

of said saws, [12] stopped; said lumber was caused to stop by reason of the fact that said dead rolls were not permitted by said valves to rest upon the same with full force, and thereupon the operator of said gang-edger, who was an employee of defendant, carelessly and negligently repeatedly lifted the said dead rolls and dropped the same, and released the pressure upon said lumber and permitted the same to be loose upon said power-driven lower rolls, whereby said lumber was caused and permitted to bind upon said saws and to be thrown thereby with great force and violence across said mill to the point where said deceased was standing engaged in his work as aforesaid, and to strike deceased in the left leg, and so cut, tore and mangled his said leg and the flesh, muscles and ligaments thereof that deceased was made sick thereby, and as a result thereof died on the 29th day of October, 1924.

X.

That by reason of the liability of said edger to throw boards when the same stopped in the course of being sawed therein, it was necessary and proper that if any board stopped in the course of being sawed by said edger, the operator of said saw should leave the dead rolls upon such board with their full weight, and should stop the lower rolls and the saws of said edger, and then should release such board by raising the top rolls after the machine had been stopped, and it was necessary and proper that such operator, in the event

a board stopped as aforesaid, give immediate warning to all in a position where they might be hit by such board, so that they might protect themselves by getting to a position of safety, but notwithstanding the stopping of said board as aforesaid, the operator of said saw carelessly and negligently failed to stop the said machine, and carelessly and negligently failed to give any warning to any persons, including said deceased, who were in a position of danger, and carelessly and negligently lifted and dropped said [13] top rolls, and the injury to and subsequent death of said deceased were the direct and proximate result of the negligence of said defendants in permitting said edger to be in said defective and dangerous condition, of the negligence of the operator of said machine in omitting to give any warning that said board had stopped and in omitting to immediately stop said machine and the rolls thereof, and in lifting and dropping said dead rolls.

XI.

That at the time of his said injury and death as aforesaid, deceased was a strong, able-bodied, industrious man of the age of twenty-six years, and was able to have earned, accumulated and contributed to the support, maintenance and welfare of these plaintiffs in the course of his natural life the sum of Fifty Thousand Dollars ($50,000.00), and by reason of his injury and death as aforesaid, plaintiffs have been and are damaged in the sum of Fifty Thousand Dollars ($50,000.00).

WHEREFORE plaintiffs pray for judgment

against said defendants in the said sum of Fifty Thousand Dollars (50,000.00) and for their costs and disbursements herein.

LORD & MOULTON,
Attorneys for Plaintiffs.

State of Oregon,
County of Multnomah,—ss.

I, Mabel Simpson, being first duly sworn, depose and say that I am one of the plaintiffs in the above-entitled action; and that the foregoing complaint is true as I verily believe.

Mrs. MABEL SIMPSON.

Subscribed and sworn to before me this 15th day of November, 1924.

[Notarial Seal] A. I. MOULTON,
Notary Public for the State of Oregon.

My commission expires July 15, 1928.

Transcript on Removal. Filed December 22, 1924. G. H. Marsh, Clerk.

[Endorsed]: Filed November 17th, 1924. J. W. Hunt, Clerk. By H. E. Veazie, Deputy. [14]

AND AFTERWARDS, to wit, on the 14th day of February, 1925, there was duly filed in said court a motion to strike out parts of complaint, in words and figures as follows, to wit: [15]

In the District Court of the United States for the District of Oregon.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON–AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

MOTION TO STRIKE.

Comes now the defendant and moves the Court for an order striking from the complaint, on the ground that the same is immaterial and irrelevant, that portion of paragraph V reading as follows:

" . . . and it was likewise extremely hazardous and dangerous in the operation of said edger for the operator thereof to lift the rolls at any time while lumber was being sawed by said saws, because the lifting of such rolls would permit such lumber to bind on said saws with great and imminent danger that said lumber would be thrown and propelled by said saws to other parts of the said mill, and would injure employees in said mill."

for the reason that this action is one presumably based upon Chapter 14 of Title 38 of Oregon Laws commonly known as the State Employers' Liability Act of the State of Oregon granting to surviving widows and children of persons killed a right of action for the violation of its requirements, and the portion moved against consists of common law negligence, and for which no right of action exists in favor of the surviving widow and children.

And defendant separately moves to strike all of paragraph VIII of the complaint for the same reason as set forth in the first paragraph of this motion and for the additional reason that this cause was removed to this court from the Circuit Court of the State of Oregon for Columbia County as a separable controversy by the Oregon-American Lumber Company, and that the defendant Troy Smith referred to in said paragraph VIII is not a party to the action before this court, and that any violation of the [16] Employers' Liability Act by the said Troy Smith is common-law negligence for which no recovery can be had by the surviving widow and children.

Defendant separately moves to strike the following portion of paragraph IX beginning with the word "and" in line 13 of said paragraph and ending with the word "rolls" in line 17 of said paragraph on page 6 of the complaint:

> " . . . and thereupon the operator of said gang-edger who was an employee of defendant, carelessly and negligently repeatedly lifted the said dead rolls and dropped the same, and re-

leased the pressure upon said lumber and permitted the same to be loose upon said power driven lower rolls,"

for the same reason as set forth in the first paragraph of this motion.

Defendant separately moves to strike all of paragraph X of the complaint except the following lines, beginning with the word "and" in line 17 of said paragraph and ending with the word "condition" in line 20 of said paragraph:

" . . . and the injury to and subsequent death of said deceased were the direct and proximate result of the negligence of said defendants in permitting said edger to be in said defective and dangerous condition,"

for the same reason as set forth in the first paragraph of this motion.

McCAMANT & THOMPSON,
RALPH H. KING,
Attorneys for Defendant.

Filed February 14, 1925. G. H. Marsh, Clerk. [17]

AND AFTERWARDS, to wit, on Monday, the 13th day of April, 1925, the same being the 37th judicial day of the regular March term of said Court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [18]

In the District Court of the United States for the District of Oregon.

No. L–9520.

April 13, 1925.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON–AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

MINUTES OF COURT—APRIL 13, 1925—ORDER SUSTAINING MOTION TO STRIKE.

This cause was heard by the Court upon the motion of the defendant to strike out that portion of paragraph 5 of plaintiff's complaint set out in said motion, paragraph 8 of said complaint, and portions of paragraph 9 and 10 as set out in said motion, and was argued by Mr. Arthur I. Moulton, of counsel for said plaintiffs, and by Mr. Ralph H. King, of counsel for said defendant.

And the Court being now fully advised in the premises, it is ORDERED AND ADJUDGED that said motion be and the same is hereby sustained. [19]

AND AFTERWARDS, to wit, on the 13th day of April, 1925, there was duly filed in said court, an opinion of the court on motion to strike out in words and figures as follows, to wit: [20]

In the District Court of the United States for the District of Oregon.

April 13, 1925.

L.—9520.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

OPINION ON MOTION TO STRIKE.

LORD & MOULTON, for Plaintiffs.

McCAMANT & THOMPSON and RALPH H. KING, for Defendant.

WOLVERTON, District Judge.

This is a motion to strike certain clauses and portions of plaintiff's complaint, on the ground and for the reason that the action is predicated upon what is commonly known as the Employers' Liability Act of the State of Oregon, and that the matter moved to be stricken is indicative of common law

liability. Plaintiff urges that the matter is relevant and material, because of the regulations of the Workman's Compensation Act. My view of the two acts, construed *in pari materia,* is this: If an employer rejects the benefit of the compensation act, an employee may sue the employer for injuries sustained through the negligence of the employer. He has his choice of remedies, as in any other case. He may sue under the Employers' Liability Act, or he may sue upon common law liability; but he cannot combine the two in one cause of action. In such a case, the employer cannot plead as a defense the negligence of a fellow-servant, contributory negligence unless wilful, or that the plaintiff assumed the risk of his employment. It would seem, unquestionably, that plaintiff is suing under the Employers' Liability Act.

The motion to strike will be sustained as to all clauses comprised thereby. [21]

AND AFTERWARDS, to wit, on the 30th day of April, 1925, there was duly filed in said court an amended complaint, in words and figures as follows, to wit: [22]

In the District Court of the United States for the District of Oregon.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

AMENDED COMPLAINT.

Now come plaintiffs, and leave of Court first had and obtained, file this their amended complaint, and for cause of action against defendant, complain and allege:

I.

That during his lifetime and until the time of his death, Clyde C. Simpson was the husband of plaintiff Mabel Simpson, and was the father of plaintiffs Wayne Dean Simpson, Earl Simpson and Joyce Simpson; that said plaintiffs Wayne Dean Simpson, Earl Simpson and Joyce Simpson are minors under the age of fourteen years, to wit: said Wayne Dean Simpson is of the age of one year, Earl Simpson is of the age of three years, and Joyce Simpson is of the age of four years, and by order of this Court, said Mabel Simpson has been appointed and has qualified and is now the duly appointed, qualified and acting guardian *ad*

litem of and for the said Wayne Dean Simpson, Earl Simpson and Joyce Simpson for the purpose of bringing and prosecuting this action.

II.

That defendant Oregon-American Lumber Company, a corporation, is now and during all the times herein mentioned has been a corporation organized and existing under and by virtue of the laws of the State of Utah, transacting business in the State of Oregon, with its principal place of business in Oregon at Vernonia, in Columbia County, Oregon, and during all of the times herein mentioned, said defendant Oregon-American Lumber Company has been engaged in the business of running a general saw and lumbering [23] mill at Vernonia, in Columbia County, Oregon, and in and about said lumber mill it employed, during all the times herein mentioned, large numbers of men.

III.

That in the operation of said mill, said defendant employed electric driven saws, rollers, gang-edgers and other machinery and devices, and all of the work carried on by said defendant in and about said mill was extremely hazardous and dangerous, and involved great risk and danger to the employees engaged therein.

IV.

That said work being of a hazardous and dangerous character, as above set forth, and involving the operation of machinery, was carried on by the defendant lumber company at the time hereinafter

mentioned, to wit: September 11, 1924, under such circumstances and conditions that defendant Oregon-American Lumber Company had the right and option under the Compensation Act of the State of Oregon to elect whether it would contribute to the fund created by said act, or whether it would refuse to contribute to said fund and reject the benefits of said act, and prior to said time said defendant lumber company had elected to reject the benefits of said act and refused to contribute to the fund created thereby, and by reason of such election was not entitled to any of the benefits of said act, and was subject to all of the terms and conditions of said act regulating corporations engaged in hazardous occupations at said time who rejected the benefits of said act.

V.

That in and about its said mill the defendant lumber company employed a certain system of live rolls used for the purpose of conveying lumber from one part of its plant to another, and a certain machine known as a gang-edger which consisted of a set of saws operated on a common drum or arbor, each saw being about thirty inches in diameter and about three-eighths of an [24] inch thick, and said saws were so arranged that when large pieces of lumber were propelled against the same, said pieces would be cut at the same time by several of said saws, thereby dividing such lumber into several pieces; for the purpose of driving the lumber against said saws there were in connection with said machine certain so-called live rolls

which were caused to revolve by gears driven by steam power, and the lumber to be cut by said saws was put upon said live rolls and thereupon a set of rolls not operated by gears, known as dead rolls, were lowered upon such lumber to hold the same firmly in position so that said live rolls could drive the same against said saws in a direct course; that said dead rolls were held down upon such lumber by a weight of about five hundred pounds, and said machine was equipped with an arrangement of steam operated cylinders and pistons into which steam was admitted by means of valves for the purpose of lifting said dead rolls from said lumber when necessary to admit pieces of lumber into said machine; said edger saws were driven at the rate *rate* of about 1,800 to 2,000 revolutions per minute, and were propelled with such terrific force that in the event lumber was permitted to be driven against the same in an irregular or uneven course, or to shift from side to side while being driven against the same, there was a great and imminent danger that such lumber would bind upon said saws and would thereupon be thrown by said saws to different points in and about said mill, with great danger to the employees engaged in said mill, and it was therefore necessary that the valves admitting steam into the cylinders operating said pistons be so adjusted that the same would admit steam into said pistons promptly for the raising of said dead rolls, and that when required to do so by the operator of said edger, would release the steam in said cylinders promptly and completely so as to permit the

full force of the weight of said dead rolls to bear upon the lumber being sawed by said edger, so that the same might be held firmly in place and projected against said saws in an even course, and not permitted to change the course at [25] which *is* started against said saws.

VI.

That on and prior to said 11th day of September, 1924, said defendant had carelessly and negligently and in violation of Section 6785, Oregon Laws, permitted said edger and said device for lifting said dead rolls to be out of repair and in a dangerous condition in this: that the valves admitting and releasing the steam into said cylinders for the purpose of operating said pistons to lift said dead rolls had been permitted to be and remain in such condition through some defect in the adjustment thereof which plaintiffs cannot particularly specify, but with which defendant is well acquainted, so that the same would not open and close freely, and that when the steam had been admitted into said cylinders and said rolls had been lifted, and the said valves were released for the purpose of permitting said rolls to drop upon lumber being cut in said edger, the said valves would not promptly release the steam from said pistons and said rolls were thereby kept partially or completely lifted and were prevented from descending on said lumber with sufficient force to hold the same firmly in position, and cause the same to be driven against said saws in a straight course, and such lumber was by reason thereof apt to stop while being driven

against said saws and to bind upon said saws and to be thrown thereby with great force to other parts of said mill.

VII.

That on said 11th day of September, 1924, the above mentioned Clyde C. Simpson was engaged in said work as an employee of said defendant in and about its said mill at a point some thirty feet distant from said gang-edger, and at the opposite end of a system of rolls leading to said gang-edger; that said work was of such a nature that he was obliged to give his undivided attention thereto and was not able to watch or observe the said gang-edger; while said deceased was engaged in his work as aforesaid, by reason of the said defective [26] and dangerous condition of said gang-edger, a piece of lumber that was being run through said edger and was being sawed by certain of said saws, stopped; said lumber was caused to stop by reason of the fact that said dead rolls were not permitted by said valves to rest upon the same with full force, whereby said lumber was caused and permitted to bind upon said saws and to be thrown thereby with great force and violence across said mill to the point where said deceased was standing engaged in his work as aforesaid, and to strike deceased in the left leg, and so cut, tore and mangled his said leg and the flesh, muscles and ligaments thereof that deceased was made sick thereby and as a result thereof died on the 29th day of October, 1924, and the injury to and subsequent death of said deceased were the direct and proximate re-

sult of the negligence of said defendants in permitting said edger to be in said defective and dangerous condition.

VIII.

That at the time of his said injury and death as aforesaid, deceased was a strong, able-bodied, industrious man of the age of twenty-six years, and was able to have earned, accumulated and contributed to the support, maintenance and welfare of these plaintiffs in the course of his natural life the sum of Fifty Thousand Dollars ($50,000.00), and by reason of his injury and death as aforesaid, plaintiffs have been and are damaged in the sum of Fifty Thousand Dollars ($50,000.00). [27]

IX.

That plaintiffs are residents and inhabitants of the State of Oregon, and residents and inhabitants of a different state than defendant.

X.

That defendant is a resident and inhabitant of the State of Utah, and a resident and inhabitant of a different state than plaintiffs.

XI.

That the amount involved in this action is greater and in excess of Three Thousand Dollars, exclusive of interest and costs.

WHEREFORE, plaintiffs pray for a judgment against said defendant in the said sum of Fifty Thousand Dollars ($50,000.00) and for their costs and disbursements herein.

LORD & MOULTON,
Attorneys for Plaintiffs.

State of Oregon,
County of Multnomah,—ss.

I, Mabel Simpson, being first duly sworn on oath say: I am one of the plaintiffs named in the within entitled action; that I know the contents of the foregoing amended complaint and believe the same to be true.

MABEL SIMPSON.

Subscribed and sworn to before me this 30th day of April, 1925.

[Seal] MARIE BENNETT,
Notary Public for Oregon.

Commission expires Mar. 5, 1929.

Service of copy of the foregoing amended complaint is hereby admitted in Multnomah County, Oregon, this 30 day of April, 1925.

McCAMANT & THOMPSON,
Attorney for Defendant.

Filed April 30, 1925. G. H. Marsh, Clerk. [28]

AND AFTERWARDS, to wit, on the 12th day of May, 1925, there was duly filed in said court an answer to amended complaint, in words and figures as follows, to wit: [29]

In the District Court of the United States for the District of Oregon.

MABEL SIMPSON and WAYNE D. SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

ANSWER TO AMENDED COMPLAINT.

Comes now the defendant and for its answer to the amended complaint filed herein admits, denies and alleges as follows:

I.

Denies all knowledge or information of the matters alleged in paragraph I of the amended complaint sufficient to form a belief and therefore denies the same.

II.

Admits the allegations of paragraph II of the amended complaint.

III.

Answering the allegations of paragraph III of the amended complaint, defendant admits that defendant employed various saws, rollers, gang-edgers and other machinery in the operation of its mill. Denies each and every other allegation contained in paragraph III of the amended complaint.

IV.

Denies each and every allegation contained in paragraph IV of the amended complaint, except this defendant admits that it is not contributing to the State Industrial Fund of the State of Oregon.

V.

Answering the allegations of paragraph V defendant admits that it used the machine known as a gang-edger, consisting of a number of saws, for the purpose of dividing lumber into several pieces at one operation. Denies each and every other allegation contained in paragraph V of the amended complaint. [30]

VI.

Denies each and every allegation contained in paragraph VI of the amended complaint.

VII.

Answering the allegations of paragraph VII of the amended complaint, defendant admits that, while employed by this defendant, Clyde C. Simpson received an injury. This defendant denies each and every other allegation contained in paragraph VII of the amended complaint.

VIII.

Denies each and every allegation contained in paragraph VIII.

IX.

Admits the allegations of paragraph IX.

X.

Admits the allegations of paragraph X.

XI.

Denies each and every allegation contained in paragraph XI.

McCAMANT & THOMPSON,
RALPH H. KING,
Attorneys for Defendant.

District of Oregon,—ss.

I, James G. Wilson, being first duly sworn, depose and say that I am the attorney in fact in the State of Oregon for Oregon-American Lumber Company, a corporation, the within named defendant; that I have read the foregoing answer and that the same is true as I verily believe.

JAMES G. WILSON.

Subscribed and sworn to before me this 12th day of May, 1925.

[Seal] LYNDON L. MYERS,
Notary Public for Oregon.

My commission expires Apr. 30, 1929.

Due service of the within answer is admitted this 12 day of May, 1925.

LORD & MOULTON,
Attorneys for Plaintiffs.

Filed May 12, 1925. G. H. Marsh, Clerk. [31]

AND AFTERWARDS, to wit, on the 15th day of June, 1925, there was duly filed in said Court, a verdict, in words and figures as follows, to wit: [32]

In the District Court of the United States for the District of Oregon.

L.–9520.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON, and JOYCE SIMPSON, by MABEL SIMPSON, their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

VERDICT.

We, the jury empaneled and sworn in the above-entitled cause, find our verdict for the plaintiffs and assess their damages in the sum of Fifteen Thousand Dollars ($15,000.00).

W. C. INMAN,
Foreman.

June 15, 1925.

Filed June 15, 1925. G. H. Marsh, Clerk. [33]

AND AFTERWARDS, to wit, on Monday, the 15th day of June, 1925, the same being the 91st Judicial day of the regular March Term of said Court,—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [34]

In the District Court of the United States for the District of Oregon.

No. L.–9520.

June 15, 1925.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

MINUTES OF COURT—JUNE 15, 1925—JUDGMENT.

Now at this day come the plaintiffs by Mr. Arthur I. Moulton, of counsel, and the defendant by Mr. Ralph H. King, of counsel, whereupon the jury impaneled herein being present answer to their names. Whereupon this cause having been heard upon the motion of the defendant for a directed verdict, upon consideration thereof

IT IS ORDERED that said motion be and the same is hereby denied.

Whereupon the trial of this cause is resumed, and the jury having heard the evidence adduced, the arguments of counsel and the charge of the Court retire in charge of proper sworn officers to consider

of their verdict. And thereafter said jury returns into court the following verdict, viz.:

> "We, the jury empaneled and sworn in the above-entitled cause, find our verdict for the plaintiffs and assess their damages in the sum of Fifteen Thousand Dollars ($15,000).
>
> June 15, 1925.
>
> W. C. INMAN,
> Foreman."

which verdict is received by the Court and ordered to be filed. Whereupon

IT IS ADJUDGED that the plaintiffs herein do have and recover of and from the defendant the sum of $15,000.00, together with their costs and disbursements herein taxed in the sum of $162.-25, and that they do have execution therefor. [35]

AND AFTERWARDS, to wit, on the 24th day of July, 1925, there was duly filed in said court a petition for writ of error in words and figures as follows, to wit: [36]

In the District Court of the United States for the District of Oregon.

AT LAW.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

PETITION FOR WRIT OF ERROR.

And now comes Oregon-American Lumber Company, a corporation, defendant herein, and says that on the 15th day of June, 1925, this Court entered judgment herein in favor of the plaintiffs and against this defendant, in which judgment and proceedings had prior thereunto certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE, this defendant prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors so complained of and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals for the Ninth Circuit; and this defendant also prays that an

order be made fixing the amount of security which the defendant should give upon said writ of error, and that upon the giving of said security said writ of error shall operate as a supersedeas upon said judgment.

W. LAIR THOMPSON,
RALPH H. KING,
Attorneys for Defendant.

Filed July 24, 1925. G. H. Marsh, Clerk. [36½]

AND AFTERWARDS, to wit, on the 24th day of July, 1925, there was duly filed in said court, an assignment of errors, in words and figures as follows, to wit: [37]

In the District Court of the United States for the District of Oregon.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

ASSIGNMENTS OF ERROR.

And now on this 24th day of July, A. D. 1925, comes the defendant Oregon-American Lumber Company, a corporation, by its attorneys, W. Lair Thompson and Ralph H. King, and says that the

judgment entered in the above cause on the 15th day of June, 1925, is erroneous and unjust to the defendant for the following reasons:

I.

That the District Court of the United States for the District of Oregon erred in denying and overruling the motion of the defendant for a directed verdict in its favor, which motion was as follows:

> "At this time the defendant moves the Court for an order directing a verdict in favor of the defendant and against the plaintiff, upon the following grounds: first, that the plaintiffs have not offered any evidence tending to establish any of the charges of negligence alleged in the complaint. Second, that the plaintiffs have not proven their case sufficient to be submitted to the jury. Third, that the plaintiffs have not offered any evidence tending to prove or establishing that the negligence alleged in the complaint was the direct and proximate cause of the injury to Claud Clyde Simpson, the deceased."

WHEREFORE, the defendant prays that the said judgment made and entered on the 15th day of June, 1925, be reversed and that the District Court of the United States for the District of Oregon be directed to reverse said judgment and to direct a verdict in favor of said defendant and

to award said defendant its costs and disbursements incurred in said action.

W. LAIR THOMPSON,
RALPH H. KING,
Attorneys for Defendant. [38]

District of Oregon,
State of Oregon,
County of Multnomah,—ss.

Service of the foregoing assignments of error is hereby admitted by the receipt within the district, state and county aforesaid of a duly certified copy this 24th day of July, A. D. 1925.

WM. P. LORD,
One of Attorneys for Plaintiffs.
July 24, 1925. G. H. Marsh, Clerk. [39]

AND AFTERWARDS, to wit, on Friday, the 24th day of July, 1925, the same being the 17th judicial day of the regular July term of said court,—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [40]

In the District Court of the United States for the District of Oregon.

No. L.–9520.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON–AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

MINUTES OF COURT—JULY 24, 1925—ORDER ALLOWING WRIT OF ERROR.

This 24th day of July, A. D. 1925, came the defendant by its attorneys, W. Lair Thompson and Ralph H. King, and filed herein and presented to the Court its petition praying for the allowance of a writ of error, an assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the Court does allow the writ of error upon the defendant giving bond according to law in the sum of $20,000, which said

bond shall operate as a supersedeas bond and supersede the judgment.

R. S. BEAN,
United States District Judge.

Filed Jul. 24, 1925. G. H. Marsh, Clerk. [41]

AND AFTERWARDS, to wit, on the 24th day of July, 1925, there was duly filed in said court a bond on writ of error, in words and figures as follows, to wit: [42]

In the District Court of the United States for the District of Oregon.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

BOND ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS, That we, Oregon-American Lumber Company, a corporation organized and existing under the laws of the State of Utah, as principal, and National Surety Company, a corportion organized and existing under the laws of the State of New York, as surety, are held and firmly bound unto Mabel Simpson, and

Wayne Dean Simpson, Earl Simpson and Joyce Simpson, in the full and just sum of Twenty Thousand Dollars $20,000.00, to be paid to the said plaintiffs, their attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 24th day of July, A. D. 1925.

Whereas, lately in the District Court of the United States for the District of Oregon, in an action in said court between Mabel Simpson, and Wayne Dean Simpson, Earl Simpson and Joyce Simpson, minors, by Mabel Simpson, their guardian *ad litem,* plaintiffs, and Oregon-American Lumber Company, defendant, a judgment was rendered against the said Oregon-American Lumber Company, defendant, and the said Oregon-American Lumber Company having obtained a writ of error and filed a copy thereof in the Clerk's office of said court to reverse the judgment in the aforesaid action and citation directed to the said Mabel Simpson, Wayne Dean Simpson, Earl Simpson and Joyce Simpson, plaintiffs, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the city of San Francisco, California, in said circuit, [43] on the 23d day of August next.

Now the condition of the above obligation is such that if the said Oregon-American Lumber Company shall prosecute said writ of error to effect and

answer all damages and costs, if it fail to make the said plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

OREGON-AMERICAN LUMBER COMPANY.

By RALPH H. KING,
Of Its Attorneys.

NATIONAL SURETY COMPANY.
ROBERT WHYTE,
Resident Vice-President.

[Seal] Attest: ERA QUARNSTROM,
Resident Asst. Secretary.

Countersigned at Portland, Oregon, this 24th day of July, 1925.

NATIONAL SURETY COMPANY.
By ROBERT WHYTE,
Resident Agent.

District of Oregon,
State of Oregon,
County of Multnomah,—ss.

This is to certify, that on this 24th day of July, A. D. 1925, before me, the undersigned, a notary public in and for said county and state, residing therein, duly commissioned and sworn, personally appeared Robert Whyte, known to me to be duly authorized resident vice-president of National Surety Company, the surety above named, and the said Robert Whyte acknowledged to me that he subscribed the name of National Surety Company thereto as surety above named, and the said Robert Whyte acknowledged to me that he subscribed the

name of National Surety Company thereto as surety and his own name as Resident Vice-President, and he acknowledged said instrument to be the free and voluntary act of said surety and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first in this my certificate written.

[Seal] RALPH H. KING,
Notary Public for Oregon.

My commission expires Feb. 27, 1929. [44]

I hereby approve the foregoing bond on this 24th day of July, A. D. 1925, and order the same to supersede the judgment in the above-entitled cause.

R. S. BEAN,
United States District Judge.

District of Oregon,
State of Oregon,
County of Multnomah,—ss.

Service of the foregoing bond on writ of error is hereby admitted by the receipt within the district, state and county aforesaid of a duly certified copy this 24th day of July, A. D. 1925.

WM. P. LORD,
One of Attorneys for Plaintiffs.

Filed July 24, 1925. G. H. Marsh, Clerk. [45]

AND AFTERWARDS, to wit, on the 27th day of July, 1925 there was duly filed in said court a praecipe of defendant for transcript, in words and figures as follows, to wit: [46]

In the District Court of the United States for the District of Oregon.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

PRAECIPE FOR TRANSCRIPT OF RECORD (DEFENDANT).

The Clerk of this court is hereby directed to prepare and certify a copy of the record in the above-entitled cause for the use of the United States Circuit Court of Appeals for the Ninth Circuit, including the following documents:

Amended complaint.
Answer.
Reply.
Verdict.
Judgment.
Petition for writ of error.
Order allowing writ of error.
Writ of error.
Bond on writ of error.
Assignment of error.

Praecipe.
Bill of exceptions.

W. LAIR THOMPSON,
RALPH H. KING,
Solicitors for Appellant and Defendant.

District of Oregon,
State of Oregon,
County of Multnomah,—ss.

Service of the foregoing praecipe by the receipt of a duly certified copy thereof within said district, state and county is hereby admitted this 27th day of July, A. D. 1925.

ARTHUR I. MOULTON,
One of Solicitors for Plaintiffs.

Filed July 27, 1925. G. H. Marsh, Clerk. [47]

AND AFTERWARDS, to wit, on the 29th day of July, 1925, there was duly filed in said court a praecipe of plaintiff for transcript, in words and figures as follows, to wit: [48]

In the District Court of the United States for the District of Oregon.

MABEL SIMPSON et al.
vs.
OREGON-AMERICAN LUMBER COMPANY.

PRAECIPE FOR TRANSCRIPT OF RECORD
(PLAINTIFF.)

To G. H. Marsh, Clerk United States District Court for the District of Oregon.

Please include in the transcript which you have been requested to prepare for the defendants in this cause in addition to the record designated by them, the

Original complaint which was contained in the transcript on removal in the said court.

The motion to strike out parts of that complaint.

The order on said motion, and

The opinion of Judge Wolverton on said motion.

A. I. MOULTON,
WM. P. LORD,
Attorneys for Plaintiff.

Filed July 29, 1925. G. H. Marsh, Clerk. [49]

AND, to wit, on the 25th day of July, 1925, there was duly filed in said court a bill of exceptions, in words and figures as follows, to wit: [50]

In the District Court of the United States, for the District of Oregon.

MABEL SIMPSON and WAYNE DEAN SIMPSON, EARL SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

BILL OF EXCEPTIONS.

This cause came on for hearing before the Hon. Robert S. Bean, Judge of the above-entitled court. Plaintiffs were present in person and by their attorneys, William P. Lord and Arthur I. Moulton, and the defendant was present in court through its attorneys, McCamant & Thompson and Ralph H. King. A jury was duly impaneled and sworn, when the following proceedings were had, to wit: [50½]

In the District Court of the United States for the District of Oregon.

MABEL SIMPSON and WAYNE DEAN SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

BE IT REMEMBERED that the above-entitled case came on to be heard before the Honorable Robert S. Bean, Judge of the above-entitled court at the hour of ten o'clock A. M. on Thursday, the 11th day of June, 1925, the plaintiffs being represented by Mr. Arthur I. Moulton, their attorney, and defendant being represented by Mr. Ralph King and Mr. C. E. Illidge, its attorneys,

WHEREUPON the following proceedings were had: [51]

In the District Court of the United States, for the District of Oregon.

MABEL SIMPSON and WAYNE DEAN SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

Portland, Oregon, Thursday, June 11, 1925, 10 A. M.

TESTIMONY OF FRED L. NYE, FOR PLAINTIFF.

FRED L. NYE, a witness called by the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. MOULTON.)

Where do you live, Mr. Nye?

A. I live at—at present I live at American Falls, Idaho.

Q. What is your occupation?

A. Why, jack-of-all trades; mostly farming.

Q. Did you ever live at Vernonia, Oregon?

A. I did.

Q. When did you live there?

A. I lived there in 1922 and '23.

Q. You lived there in 1922 and '23?

A. Yes, sir.

Q. Were you there in the fall of 1924?

A. I was—no, I was not.

Q. What were you doing there in the fall of 1924? The fall of 1924, was last fall, Mr. Nye.

A. Yes, sir.

Q. Were you there then?

A. I wasn't there then.

Q. When did you leave there?

A. I left there in the spring of 1924.

Q. Were you there on September 11th—in Vernonia on September 11th, 1924? A. I was.

Q. What were you doing there then?

(Testimony of Fred L. Nye.)

A. Working in the sawmill.

Q. What was the mill you were working in?

A. Oregon-American.

Q. Oregon-American Lumber Company's mill?

A. Yes.

Q. How long did you work there? [53—1]

A. Worked there eight months. Commenced when the mill started, about the 9th of July.

Q. And what were you doing from the time you started to work until the 11th of September?

A. I was edger tailer in the mill.

Q. What were the duties of your position?

A. I had to transfer the timbers and pull the edgings off the timbers that came through.

Q. Do you know whether you started on this edger that you were working on at the time the mill started, and when the edger was first put in operation?

A. I didn't start with this particular edger; other one right beside it.

Q. How long did you work on the one right beside it?

A. Oh, about three weeks if I remember right.

Q. How long did you work on this one before the day that Clyde Simpson was hurt there?

A. Well, I worked—after I left this other edger, worked there two or three weeks—

Q. And you worked there the rest of the time up to September 11th, on the same one Clyde Simpson was working on? A. Yes.

Q. Will you try to explain to the jury; describe

(Testimony of Fred L. Nye.)

that machine, the edger on which you were working, making it as clear to them as you can how the machine was constructed; the one on which Clyde Simpson was working when he got hurt.

A. Well, they have line-up rolls behind the edger where he was working.

Q. I will interrupt you from time to time, so as to get [54—2] it clear. These line-up rolls, how long a set of rolls were they?

A. Oh, they were about twenty or twenty-five feet long.

Q. Were they live rolls or dead rolls?

COURT.—You mean the rolls were twenty-five feet long?

A. Where they extended back that far.

COURT.—How long was the roll itself?

A. The set of rolls.

COURT.—How long were the rolls?

A. Oh, there were several rows of rolls in there.

Q. I think you don't understand the Court's question.

JUROR.—Was the roll four feet—four—five—three? A. They were three-foot live rolls there.

Q. How long is the set from the edger back to where the man who lines up for the edger stands?

A. About twenty-five feet, they extend.

Q. Are these rolls, that series of rolls, are they live rolls or dead rolls?

A. Well, part of them is dead rolls, and when he steps and raises up another set of rolls it drives the timber into the edger.

(Testimony of Fred L. Nye.)

Q. These rolls that raise up though are they driver rolls or are they rolls which are dead?

A. They are driven rolls that they are raised up.

Q. How are they operated? Where is the trigger that sets them in operation?

A. It is underneath there and he steps on the pedal.

Q. Suppose that set of rolls referred to leading there is this table and the saw at the opposite end of it, tell us about [55—3] where those pedals are that are used by the men lining at the edger; where are they? Suppose this was the end of the rolls here?

A. In the first place they were direct under the timber that was lined up; but they changed them and I don't remember—they changed them one side or the other, I don't remember which.

COURT.—Suppose that table was—the rolls were on that table; how far apart would they be?

A. About four foot.

COURT.—How long was the table upon which they rested—the platform—whatever you call it?

A. Well, twenty-five feet long.

COURT.—Twenty-five feet long?

A. They didn't have to be the full length of the timber.

COURT.—About six or seven rolls on the table were there?

A. Yes, something like that.

Q. Now, alongside these rolls to the right of the station where the man who was lining up to the

(Testimony of Fred L. Nye.)

feeders—what do you call that man—what was Simpson—what was the name of his job?

A. Line-up man.

Q. Now, to the right of where the line-up man stood, was there another set of rolls?

A. To the right of him, yes.

Q. What were those rolls used for?

A. They were chains to run the timber down to the rolls.

Q. Conveyer chains, were they? A. Yes.

Q. How did the lumber come into the mill? Just describe [56—4] how it comes up to the edger—what brought it there?

A. Why a set of rolls brought the lumber up to the edger.

Q. No, suppose here is this liner-up standing here, and here is this chain coming along. Where does the lumber come to the liner-up from?

A. Comes from the head rig. A set of rolls brings down here to this chain—to the other chain about four foot; they run the lumber down—

COURT.—Have him first describe the table upon which the rolls are located, and the location of the saw.

Q. The lumber comes riding down on a set of rolls, doesn't it? A. Yes, from the head rig.

Q. Just from up there in the mill? A. Yes.

Q. And when it comes alongside or parallel these rolls that are in front of the saw of the edger, it rests on these rolls? A. Yes.

Q. That it came in on. There are a set of little

(Testimony of Fred L. Nye.)

chains which are used to slide it over from the rolls it comes in on, on to these rolls that lead up to the edger? A. Yes.

Q. How are those chains—who operates those?

A. Who operates those rolls?

Q. The chains which bring the lumber off the conveyor-rolls? A. The line-up man.

Q. What kind of lever or trigger device does he use to move a board off these rolls which it comes in over on to the edger-rolls? A. Foot pedal.

Q. Where is it located?

A. Just barely behind the edger. [57—5]

Q. So if the table were the group of edger-rolls and down where the gentleman is sitting down there were the edger itself, where is the pedal? Where would I find the pedal here in the floor—over here or where? Just come down here and show us where these pedals are.

A. These were the rolls around the edger. Just to one side of the timber, in the first place; I don't remember which; they were directly under the timber.

Q. In the first place?

A. He cut them off; then moved them from one side to the other; they were right close enough.

Q. Where were they when this boy was hurt?

A. Right straight in line with the timber.

Q. How many pedals were *they?*

A. There were two.

Q. What were they used for? You have said one

(Testimony of Fred L. Nye.)

would move these boards over; what was the other used for?

A. The other one was to throw them back this way if he went too far; to line them up against the side, the solid side so they went straight through.

Q. Then here is a group of rolls, you have said about three foot long and six or seven of them, and some four feet apart. Now along this group of rolls how many rolls were there that were alive—were running?

A. Just one—just about four I think.

Q. And if he stepped on one of these pedals, what happened to that set of rolls?

Q. He had nothing to do with that live set of rolls. [58—6]

Q. Who operated those?

A. The edger-man did.

Q. The edger-man operated those?

A. Yes, he lifted them up; they were like this and raised up and raised the timber out and shoved it ahead.

Q. When they came up under the timber, they drove it forward?

A. They drove it forward, yes.

Q. What were the duties of this man who is referred to as the liner-up? What did he do in connection with it?

A. He just had to line up the timber.

COURT.—Was Simpson the liner-up?

A. He was the liner-up man.

Q. Let's get it straight. We will take a board in

(Testimony of Fred L. Nye.)

across through that edger; the board comes in on these conveyer-rolls, and comes along parallel with the edger-rolls; what does he do to it to get it over on the edger-rolls?

A. Why, he pulls one of those levers.

Q. He steps on one of those pedals? A. Yes.

Q. What does that do to the board?

A. That shoves it over another set of chains.

Q. Those chains that you refer to simply carry it over and lay on the edger-roll?

A. Set it over.

Q. What does the liner-up do to it then?

A. It generally comes too far, and if a straight piece of timber, he pushes over tight against the—takes hold of the end of it at the same time, and steps on the pedal and sets it over again.

Q. Was his duty to line up the edger table?

A. Yes.

Q. Who next does anything to it? [59—7]

A. The edger-man; that is when it is lined up he steps on his pedal and lifts up his rolls and shoves to the edger.

COURT.—Where is the edger-man standing?

A. He stands right—

COURT.—At the same end the liner-up did, or the other? A. No, right close to the edger.

JUROR.—Up to the other end of the table, then?

A. Yes.

COURT.—Where is the edger? (Indicates.)

Q. Now, at the other end of the edger from where

(Testimony of Fred L. Nye.)

this line-up stands—what is out there—at the other end of this set of rolls?

A. Where the liner-up man stands?

Q. Right straight across the rolls from him; you say it is twenty-five feet long. Twenty-five feet away, what is down there?

A. There is a space there.

Q. How wide is that space?

A. About fifteen feet wide.

Q. You think that space is fifteen feet wide between the rolls and the edger?

A. I am just judging; I never measured.

Q. Anyway there is an open space in there?

A. Yes.

Q. What comes next?

A. That is between—there is an upright post, iron post in there, you know.

Q. What has that post to do with it?

A. That is a brace in the roll.

Mr. MOULTON.—I may be able to diagram that. [60—8] I don't know whether I am going to be much help that way or not. Possibly I can help—can give an idea of it.

Q. Now if you will suppose, Mr. Nye, that this is a set of rolls, looking at them end-on—not an accurate perspective drawing—that this is the station of the liner-up in here, and that the set of rolls led down here. Then you say there is a space between that and the edger?

A. Between the edger and that—not very much.

(Testimony of Fred L. Nye.)

COURT.—You said about sixteen feet a moment ago.

A. I misunderstood. I thought you meant back here where the man stands.

Q. Now, down here between the edge of this set of rolls and the edger, how wide is that?

A. Between the edger and the rolls?

Q. Yes. A. Two feet and a half.

Q. Just a little space in there?

A. Just room for a man to walk through there.

A. I thought either I didn't remember right or you didn't remember right. Where does the edger-man stand? A. Stands right by the edger.

Q. He stands right there at the edger?

A. Yes.

Q. And what devices has he to set the machinery in operation?

A. Now, there is the saw, you know.

Q. This is the saw. This is supposed to be a straight-on view of the saw.

A. And the edger-man is standing right here?

Q. Standing right here. What does he use to operate the machinery—what kind of levers or pedals?

A. He has a couple of pedals right here. [61—9]

Q. What do those pedals do to the machinery?

A. Raises up his live set of rolls he has in there between these other rolls.

Q. There are certain rolls in under here?

A. In between.

(Testimony of Fred L. Nye.)

Q. They are in between these others that are alive, something like that? A. Yes, sir.

Q. And when he sets the pedal that lifts these live rolls up under a band that is lifting the dead rolls? A. Yes.

Q. Where does the board go then?

A. Conveys to the edger.

Q. Goes in this way? A. Yes.

Q. I have drawn a device consisting of a roll here and a roll over here; describe that device.

A. This is supposed to be the top of your edger; comes around like that; roll here; roll here; and that is the carriage up top; somewhere near the top; it is square on top.

Q. Are these rolls live rolls or dead rolls?

A. They are dead rolls, this one and that one.

Q. These rolls illustrated here, what kind of rolls are they?

A. Live rolls and conveyors; supposed to pull the lumber; that is supposed to hold it down.

Q. These rolls are corrugated rolls? A. Yes.

Q. How big are they? A. Which?

Q. The bottom rolls?

A. About five inches, five or six inches thick.

Q. And with this drum I have illustrated here you see, how long is that drum—how wide is the space the [62—10] lumber goes through into the edger, crosswise the drum.

A. Well, this side, it takes about thirty-six inches.

Q. So it is about thirty-six inches wide?

A. Yes.

(Testimony of Fred L. Nye.)

Q. And in that space of thirty-six inches, how many saws are there? A. I think five.

Q. How big are these saws?

A. Well, the way they are running them, there are four large ones; about twenty-four inches, I think.

Q. About twenty-four inches in diameter through the saws and they are circular saws, are they?

A. Yes.

Q. All driven by the same drum, are they?

A. Yes, these saws all run on the shaft; these rolls aren't as wide; there is three sets of these rolls; these are a set of long ones, thirty-six inches; another short one like that; another short one on the other side, with double edges; a man sawing on the other side.

Q. Now, then, there is a series of saws on this same shaft? A. Yes, sir.

Q. What happens to the board when driven in?

A. Sawed in dimensions.

Q. Are those saws stationary on the shaft or is there means by which it can be moved back and forth along the shaft?

A. Can be moved back and forth on the shaft; can saw any dimensions.

Q. They can set to saw different widths boards. How many pieces can the same piece of timber be sawed into at one operation there? [63—11]

A. That just depends on—

Q. There are saws enough to saw into how many different pieces?

(Testimony of Fred L. Nye.)

A. There would be—you can saw into six different pieces.

Q. Now, then, Mr. Nye, these rolls over here, are they stationary, these top rolls that you have said are dead rolls, or can they be swung up and down?

A. These top rolls?

Q. Yes.

A. They can be lifted up by steam lever or throttle he has there.

Q. The edger-man has a throttle?

A. Has a throttle; he raises these rolls up when he puts a timber in.

Q. Overhead is what in relation to the steam?

A. Steam-pipes.

Q. Over the top, what is up there, on each side? Is there a cylinder up there?

A. There is, yes.

Q. Where is the valve connected with that cylinder, do you know?

A. Right on top, right close to the top.

Q. What operates that valve? A. Steam does.

Q. Who has control of the valve and opens and closes it? A. The edger-man.

Q. What happens when he operates that valve? What happens to these rolls?

A. When he lifts up on it that throws the—when he lifts up on it that throws them open.

Q. That lifts these rolls up? A. Yes. [64—12]

Q. In other words they hinge up, possibly like that?

(Testimony of Fred L. Nye.)

A. It is hinged right in here; this top is square above it—square across. Make it square across the top.

Q. And these hinges are down like that?

A. Something.

Q. And they are hinged so these rolls can be raised up?

A. Hinged right in here; don't come clear to the top.

Q. Don't come clear to the top?

A. No, don't open to the top.

Q. Something more like that?

A. They are hinged right in here.

Q. Now, when he operates this steam valve how high can these rolls be lifted up above the live rolls below them? A. They raise about twelve inches.

Q. Now, this first roll that the lumber first strikes is a driver roll or corrugated roll, isn't it?

A. Yes.

Q. And when the lumber comes out of the machine, what kind of a roll is that?

A. They are driven rolls.

Q. Is it any different from the one on the other side?

A. Yes, it is different; it is a solid table there.

Q. No, this first roll comes here.

A. That is from the edger.

Q. This edger-roll, what kind of a roll is that?

A. That is corrugated also.

Q. Is that the same as the roll on the other side?

A. The same.

(Testimony of Fred L. Nye.)

Q. Is it driven? A. Yes.

Q. As the board runs through there in which direction do these two rolls move? Which way do they roll? [65—13]

A. They are moving forwards, towards you.

Q. So as to drive the board through the machine?

A. Yes.

Q. When the board that we have referred to a while ago that came in on the conveyor-rolls along here is shunted over on to these dead rolls, what does the edger-man do to it to cut it into pieces; what happens next?

A. He has the saws set. As soon as he sees the timber coming, he has his saws set, knows what to cut them; he sets his saws so far apart, just as far as according to the figures he is cutting.

Q. After he gets his saws set and the lumber is lined up and laying there, what does he do to it?

A. Why, he steps on his pedal and sends it into the edger.

Q. That lifts these live rolls on the foot-lever here and moves it up to this next live roll?

A. He lifts up his rolls; the edger steps on it until it catches hold the end of it and it goes on in.

Q. He operates this steam valve and raises this roll up and with these rolls, runs it in between them?

A. Yes.

Q. Then what does he do when it gets in there, the end of it?

A. He doesn't have anything to do then.

(Testimony of Fred L. Nye.)

Q. So far you have just lifted this roll high up in the air.

A. They both raise at the same time, these here.

Q. Does he lower this roll on the board?

A. It lowers itself. He just raises up and it goes down.

Q. Then this rests on the board? A. Yes.

Q. And binds it down against this live roll?

A. Yes.

Q. Where does the board go then?

A. The board is supposed to go on through; generally does. [66—14]

Q. And what happens to it? Comes on through out here? A. Sawed in different dimensions.

Q. According to the set of the saws? A. Yes.

Q. Where was your station?

A. My station was way back in the end here between—there was one roll out and space enough for me to stand in there.

Q. How far were you from the edger?

A. I was about thirty feet from the edger.

Q. What was your task back there where you stood?

A. Push the edgings off where the edger tailer—

Q. In other words, you were to get the lumber away from there? A. Yes.

Q. After it was cut. Of these three men, the liner-up down here, the edger-man and you down here—the tailer edger-man, who was superior; who was in charge of the machine there?

(Testimony of Fred L. Nye.)

Mr. KING.—I object. That has nothing to do with the allegations of this case.

COURT.—I think it is proper to show the circumstances; no claim, I believe.

Mr. KING.—If it is just explanatory. You don't claim anything else for it, do you?

Mr. MOULTON.—Well, I have a position in this case which I have already urged but which is not here; for the present I reserve my right to apply it to whatever it may be applicable, but I still think it is important as part of the situation here.

Mr. KING.—For the purpose of the record, I would like to make an objection to that question on the [67—15] ground it is immaterial and irrelevant and not pertinent to any issue in this case, and may I save an exception to your Honor's ruling.

COURT.—Very well. I think it is competent to describe the situation there.

Q. Will you just answer that; who was the man in charge out there.

Mr. KING.—Same objection.

A. The man in charge of the machine is the superior officer.

Q. What is his title? A. Edger-man.

Q. Who directs and controls the liner-up on one side, and the tailer edger on the other?

A. He is supposed to direct both men, the liner-up man and the tailer.

Mr. KING.—It is understood my objection goes to all this.

COURT.—Yes, I understand.

(Testimony of Fred L. Nye.)

Q. Now, you had been working, had you, right straight along for several weeks?

A. Several weeks.

Q. In that period of time, Mr. Nye, that you had been working there at this machine and before Simpson was hurt, how had this machine been working in respect to the readiness with which these rolls responded to the valves—raised up and came down?

Mr. KING.—Object to the form of the question as leading, and also object as not competent evidence for any issue in this case.

COURT.—I understand the charge of negligence here is that the apparatus was out of order, the valves were out of order. [68—16]

Mr. KING.—Object to the form of the question.

Q. Will you just answer, Mr. Nye, in regard to that. A. It was out of order.

COURT.—State how it operated.

Mr. KING.—Move to strike out his conclusion.

COURT.—Not your opinion of it.

Q. Tell how it responded and what it did.

A. When he was handling that lever, why it didn't press down on the timber hard enough; it didn't give the right pressure on the timber we were sawing.

Q. Would the boards come through without stopping—come right straight through?

A. Not always; sometimes they did, and sometimes they didn't.

Q. How often did they buckle and stop?

A. Pretty often at that time.

(Testimony of Fred L. Nye.)

Q. Now do you know just how near he could close the two together at that time?

A. Couldn't come closer than two inches, that is without pressure.

Q. Couldn't come without pressure closer than two inches? A. No.

Q. What about the manner in which the rolls close on a thin board, boards an inch thick?

A. Didn't have much pressure on an inch thick.

Q. How did it work in sawing boards an inch thick? What experience did you have with it here in regard to whether it would take hold of them firmly and drive them through?

A. The board stopped and we had to raise it up and whack [69—17] down on it with the rolls.

Q. How often did it stop and stick that way?

A. Three or four times in half a day.

Q. How long did that continue, these rolls bucking that way?

A. Oh, well, it continued for a couple of weeks.

Q. Was that condition still existing when Simpson was hurt? A. It was.

Q. Do you know whether a report had been made to the mill foreman? Do you know?

A. No, I don't. I don't know that.

Q. Now, then, will you tell the jury what you were doing and just what happened when Simpson was hurt?

A. They were sawing an inch board, an inch cant they call them; call them all cants; and they lined it

(Testimony of Fred L. Nye.)

up straight and it went through there all but one board, and it didn't.

COURT.—What?

A. It went through, all but one board. They sawed it in three pieces, and they all went through but one.

Q. Let's get at it, Mr. Nye. How does it come that one board was longer than another in that situation?

A. It wasn't longer, but one board stopped and the other two went on.

Q. There were three pieces sawed. One board was sawed into three pieces, and two of them came on through? A. Yes, and the other one stayed.

Q. The other one stopped? A. Yes.

Q. Where did it get before it stopped?

A. It got to the first roll on the edger and stopped.

Q. Did it get clear past the saw? [70—17½]

A. Between the saws.

Q. It was in between the saws?

A. Stopped in between the saws.

Q. What happened then when it stopped?

A. The rolls were raised and they looked to see what was in there.

Q. Who did that?

A. The operator, the edger-man.

Q. Where were you standing?

A. I was standing in my position back there between the rolls.

Q. What were you looking at?

A. Looking right at the edger.

(Testimony of Fred L. Nye.)

Q. What was the reason you would be looking right at the edger?

A. I was watching—I had to be watching the edger all the time.

Q. What happened when these rolls were raised?

A. The board went out of there.

Q. Just describe the force and violence with which it went out, and which way it went out.

A. Went straight backward, as near as I could tell went straight back from the edger.

Q. How much of that board yet remained between the saws when it went out? A. None of it.

Q. I mean before it went out, when it stopped?

A. How much of it?

Q. Yes. A. The whole board was there.

Q. I just want you to say how far forward it had gotten before it reversed and went back?

A. Just between the saws. [71—18]

Q. In between the saws there? A. Yes.

Q. Where did it come from there; assume this was the board.

A. Revolved in this way. This is supposed to be the edger and line-up here. The saws revolve backwards, you know, sawing lumber.

Q. This saw is driving against the board as it comes through there?

A. Yes, and the rolls push it that way.

Q. The roll is revolving in one direction, and the saw in another? A. Yes.

Q. Where did the board go from the time it stopped there?

(Testimony of Fred L. Nye.)

A. When he raised the rolls in about a second, it moved over like that. When it moved one side, it went out the other.

Q. Which way did it go?

A. Straight back. I saw Simpson jump up in the air.

Q. Was any call or warning given?

A. There wasn't.

Q. Was there time for any warning to be given after it stopped?

A. Not after he raised the rolls. Wasn't no time to give a warning.

Q. How long was it stopped when the operator raised the rolls?

A. Didn't stop I couldn't say more than a second.

Q. How long after he raised the rolls before the board went back?

A. They went just about a second.

Q. With what speed or force did it go.

A. It went with all the force anything could give.

Q. Can you give the jury any idea whether it just rolled back?

A. No, it went out of there like a bullet out of a rifle. [72—19]

Q. Could you see it?

A. No, I couldn't see it. I see the man jump in the air, and didn't know whether he was hit or not until I walked up that way, and everybody stopped generally.

Q. Where did the board go? Where was the board and Simpson when you got there?

(Testimony of Fred L. Nye.)

A. I didn't go clear back to him. They all jumped in there and picked him up, and they were carrying him out so I never saw where the board went to.

Q. You didn't see where the board did lay back there? A. No, I didn't.

Q. Could you tell from where you stood whether the board hit Simpson? A. I could.

Q. And it hit him?

A. I know it hit him because it knocked him out; went right in his direction.

Q. Did you go back there to see whether anything there to indicate he had been hit?

A. No, I didn't. I could see all I wanted to see from where I was at. I saw he was hurt, and it made me sick, and I didn't go back there.

Q. You didn't go back there to him because others were there? A. Yes.

Q. Now, in regard to that steam cylinder that operates that, do you know what was the reason these valves wouldn't close those rolls down?

A. They wasn't adjusted right. That is all I know about it. [73—20]

Cross-examination.

(Questions by Mr. KING.)

I want to get some of these matters clear here. I don't want to put you in the light of being misunderstood before the jury. About the last answer that you gave, you say the valves weren't adjusted right. That is just your own notion, isn't it?

(Testimony of Fred L. Nye.)

A. That is what everybody said. I saw them working on them afterwards.

Q. What I want to get at: You are just like any of the rest of us, you were told about the condition of the valves, and that is the basis on which you draw your conclusions that they were not adjusted right. Is that true? A. Yes, sir.

Mr. KING.—If your Honor please, at this time I move to strike out the testimony of the witness with respect to the condition of the valves from the record.

COURT.—It will be eliminated.

A. I couldn't set valves myself, so I couldn't—

COURT.—You tell how they operated, and the jury will say whether adjusted right or not.

Q. Now, do you remember the date Mr. Nye, when that sawmill commenced operation?

A. The ninth day of July.

Q. How long had you been working there at that time? A. When it started operation?

Q. Yes. A. Hadn't worked there before.

[74—21]

Q. That was the first time you went to work there? A. Yes, sir.

Q. That was all new machinery there wasn't it?

A. It was.

Q. Had you had previous experience in lumber mills?

A. I had.

Q. Where was the last position you held; what

(Testimony of Fred L. Nye.)

place was that prior to coming to Vernonia in the sawmill? A. I worked at St. Helens.

Q. What lumber company was that?

A. That is the McCormick Mill.

Q. The McCormick Mill there at St. Helens?

A. Yes, large mill.

Q. What year were you there at St. Helens? What year was that? A. That was in '22 and '23.

Q. You were there two years?

A. A year and a half part of '23.

Q. Did you farm before that? A. I did.

Q. How many years did you farm before that?

A. Well, the main part of my life; sawmilled a little.

Q. So your experience in sawmills was limited to the McCormick Mill at St. Helens, is that right?

A. Before I went there, yes.

Q. You had never worked in any other sawmill besides McCormick's and the East Oregon, is that right?

A. Yes, small sawmills; I understand the principle of it.

Q. What position did you have in the McCormick mill?

A. I was working at the resaw, they call it.

Q. Resaw?

A. Line up, resaw yes, and spot it on a trimmer. [75—22]

Q. When you first came to Vernonia, you say that was July 9, 1924, is that right? A. Yes, sir.

(Testimony of Fred L. Nye.)

Q. What work did you start on there—what kind of a job?

A. Started working on a tailer edger, on the pony-edger.

Q. Pony-edger. That brings to my mind the question: How many edgers were there there in the East Oregon Mill or the Oregon American Mill?

A. There were two large double edgers and a pony-edger.

Q. Three edgers? A. Yes.

Q. And as I understand, you call these large double edgers; really were big edgers on one side and smaller edger on the other, is that right?

A. Small saws; they edge from the gang-saws.

Q. So there were three edgers there altogether?

A. Yes.

Q. Now, how long did you work as tailer off?

A. Edger tailer?

Q. Edger tailer; how long did you work as edger tailer on the pony-edger?

A. Two or three weeks; I can't say for sure.

Q. About two or three weeks?

A. Something like that.

Q. You would say practically up to the end of July; July 9th, up to about August 1st, you worked there. What did you do after August 1st when you ceased to work as pony-edger?

A. I worked on this edger until I quit the mill.

Q. When did you quit the mill?

A. Quit the mill the middle of March.

Q. The middle of March this year?

(Testimony of Fred L. Nye.)

A. This year. [76—23]

Q. And you worked on the big edger then, from August 1st to the middle of March this year?

A. Yes.

Q. Is that right? A. Yes.

Q. Who was edgerman on the big edger?

A. I don't know what his surname was, his given name was Pete.

Q. Pete Matesco?

A. I think so, that sounds familiar.

Q. He was working there at the time of this accident, was he? A. He was.

Q. He was the edger-man there, was he?

A. He was.

Q. You were tailer edger-man, and Pete Matesco was edger-man, and Simpson was the man that was line-up man for the edger, is that right?

A. That is right.

Q. At the time of the accident. Now did you ever make any complaint about the edger to anyone?

A. I never did, no, it wasn't any of my affairs.

Q. Mr. Nye, I hand you a photograph and ask you to look at that and tell me what it is, if you know?

A. That is a picture of the rolls coming down from the head rig, a picture of the edger, the timbers lined up.

Q. Is that the edger that you have been talking about? A. Yes.

Q. You recognize that?

A. I do, as plain as can be.

(Testimony of Fred L. Nye.)

Q. That picture looks accurate does it?

A. It is accurate.

Q. Do you see anything, Mr. Nye, about that picture that is different in any way from the conditions as you recall [77—24] them at the time of the accident to Mr. Simpson?

A. I can't remember whether they changed those pedals here before he was hurt, or after.

Q. You can't be certain as to that?

A. I know they cut them off but what time they did I don't know; they cut them off before he was hurt.

Q. They cut them off, you say, before he was hurt?

A. Yes, I remember him telling me he was going to cut them off.

Q. As to whether or not they were changed in any other way you don't recall at the present time?

A. I don't recall anything else.

Q. You wouldn't say that they were, or weren't?

A. No, I wouldn't.

Q. Now with these remarks which you have just made about the picture, is the picture otherwise just the same?

A. Yes, as near as I can remember.

Offered in evidence and marked Defendant's Exhibit "A."

Q. Now Mr. Nye, in order that we can make this a little clearer, I am going to ask you to point out on this picture where Mr. Simpson was standing in his work, if you will. This is not a very large

(Testimony of Fred L. Nye.)

picture, but I think it will greatly clear up the situation. A. Very plain.

Q. Just put a mark on the picture where Simpson was standing. Mark it "S." In order to make it clear, will you put an "S" where Mr. Simpson would be standing while lining up a piece on the roll? (Witness does so.) [78—25]

COURT.—Is that where you say he was standing when lining up?

A. When a man was lining up was standing—I thought you said—I misunderstood you.

COURT.—Mark it where he would be standing.

A. Lining up he would be standing here. By this pedal, right there is where he would be standing. Put his foot on there; standing there and taking hold of the timber.

Q. Now you have marked this, the record will show, but not very plain. Will you please point your finger to the point where you marked the "S" where Mr. Simpson was standing when lining up a timber on the roll. (Witness does so.) Now will you point out on the picture these conveyor-rolls that the timber came down on?

A. From the head rig?

Q. Yes; where is the head rig?

A. Back this way.

Q. Now the timber is coming down on these rolls?

A. Right down there; has a bumper there.

Q. That stops it there? A. Stops it there.

Q. Who operates these chains to move it over on the edger-roll? A. The line-up man.

(Testimony of Fred L. Nye.)

Q. That would be Mr. Simpson?

A. Yes, with the pedal here.

Q. Press with the pedal?

A. I thought two pedals there, looks something like that; one of them moves it over this way, the other moves it back that way if it happens to move too far, so he can reverse the chains back and forth. [79—26]

Q. I suppose the timber on the picture is a good deal thicker than the one that was on the roll at the time? A. Only one inch thick, that was.

Q. How wide was it?

A. About thirty some inches wide.

Q. And what were they cutting out of that timber thirty inches wide and one inch thick?

A. Cutting boards out of it, one inch boards.

Q. I mean how wide were they?

A. I don't know just how wide the inch cant was. I know this board over here was a six or eight inch board that left, in size.

Q. Were you led to believe the edger-man was setting the saws so as to cut boards six by one out of that cant or slab that came over one inch thick?

A. I think two was wider than that. I thought this was a narrower one.

Q. The edger stands up here and sets his saws, when he sees a piece of timber in front of him, to cut what he thinks will take the most lumber out of it?

A. He cuts to order, he has his orders. Up here is a blackboard with figures on it. There is a roll

(Testimony of Fred L. Nye.)
in there; you can't hardly see it, that raises up, and they are running all the time. They put the lumber up there.

Q. They are down in here?

A. You can't see them hardly.

Q. Now, there is one point I didn't get clear. I tried to pay attention. How long did you say this piece of lumber was that was coming through the edger? [80—27]

A. I don't believe I said.

Q. Maybe you didn't. I thought you didn't say. I thought I might not have paid attention.

A. No, I was to tell the length of the table. Nobody asked that question.

Q. How long would you say that was?

A. About thirty foot; it wasn't long enough for me to get hold of it; it couldn't have been that long.

Q. You couldn't reach it?

A. No, I couldn't reach it.

Q. You were standing thirty feet back from that edger?

A. Yes, back here, and pretty hard to get out, about three foot deep.

Q. Mr. Nye, you spoke of the edger on one side being up three feet, or thirty-six inches, this big side edger. Now there are two little projections over here? A. Yes.

Q. Do you want the jury to understand that they run all parts of the edger at the same time, or do they run different parts at different times?

A. All these saws run on one shaft.

(Testimony of Fred L. Nye.)

Q. I know turning. Suppose this piece coming through here now. Would they also put another piece over here and have it go through?

A. At the same time, yes.

Q. Have it go through at the same time?

A. Yes.

Q. They were not doing that at the time Mr. Simpson was injured. Was just this one big slab going through?

A. Just this one inch board. [81—28]

Q. Just this big side edger was running at the time he was hurt? A. Just this one side.

Q. How far would you say it is back from this last dead roll here? How much space is there directly behind it? I understood you to say fifteen feet.

A. I think fifteen feet between the posts over there.

Q. Fifteen feet there; from this roll back this way, about how many feet?

A. Have a chain over here to take the timbers over the gang; lay behind this post; but it must be twenty feet in there.

Q. Twenty feet? A. Yes.

Q. Now, assuming that Mr. Simpson, the operator, had brought this piece of timber, this cant as you call it, I believe, brought it over from the conveyor-rolls by using this chain and had lined it up, got it even with the saw, what would Mr. Simpson have to do then?

(Testimony of Fred L. Nye.)

A. Lined it up for the saw—that is all he had to do.

Q. Now, would it have been possible then for Mr. Simpson to line up this thirty-foot piece—after he had lined up this thirty-foot piece—for him to have stepped right over in there?

A. I guess he could.

Q. How about stepping over to this side?

A. That could be.

Q. Could go either way? A. Yes.

JUROR.—Was there room, coming on these rolls, in which could swing the lumber in down there?

A. Whenever they sawed one, it would go down there. [82—29]

Q. That lumber coming down on these rolls there wouldn't go further than this? A. No.

Q. Wouldn't interfere with his standing here?

A. Sometimes it did they were pretty long. They come way back over, clear over this post. They hit that post sometimes.

Q. Assume the piece was only thirty foot long, it wouldn't interfere with his standing there?

A. No.

Q. That is about what that is? A. Yes.

Q. If a piece is thirty feet long, as I say wouldn't be anything to prevent him standing over in there while the piece was being sawed?

A. No.

JUROR.—The way I understand the matter, he can stand there if he wants to.

A. I don't know. If any trouble a man don't

(Testimony of Fred L. Nye.)

stand down there. They tell me he is supposed to give a high sign there if trouble or danger. That is the way they always talked to me. I have lined myself. They have told me to get out of the way if anything dangerous. They aint supposed to kick back unless a knot or something like that.

Q. They do kick back, don't they?

A. That one did, anyway.

Q. You say when you—if you were standing here lining up this way, you would stand directly behind that piece while it went through the edger?

A. I wouldn't.

Q. You wouldn't? A. No.

Q. You would stand either to one side or the other would [83—30] you not?

A. That was danger enough.

Q. I mean you would stand to one side or the other? A. Yes.

Q. Now, I am going to hand you another picture, and ask you to examine that picture and look it over carefully and see if it correctly presents a view of that portion of the mill that this edger is, as far as you can tell, and as far as you can recollect, the way the conditions were at the time of the accident to Mr. Simpson.

A. No, there is a difference.

Q. What?

A. Some things been done different there.

COURT.—I didn't hear what you said.

A. I said there had been things changed there

(Testimony of Fred L. Nye.)

since he got hurt. Changed here, but none in this part of the mill.

Q. Not in the part of the mill where the edger was there?

A. No, nothing there that I can see.

Q. Was the general view of that particular mill the same, especially with respect to this edger?

A. Yes.

Offered in evidence and marked Defendant's Exhibit "B."

Q. Now look at this Defendant's Exhibit "B." This is the same edger we had another view of, in the other picture, isn't it?

A. I guess that is.

Q. This is the place where he would be over at the end of these rolls, wouldn't it, where it is coming out? Which side is that, coming in or going out?

A. This is where it comes in. There is a set where it [84—31] moves through, five saws you see, five handles there.

Q. He just moves these over and cuts what width he wants to?

A. He can set them over; sometimes they have to use these different rolls here.

JUROR.—We can't see that picture from here. Is that the edger-man standing here?

A. That is the man.

JUROR.—Is this edger any different from any other edger used in large sawmills?

A. Why it is some different, but on the same prin-

(Testimony of Fred L. Nye.)

ciple. Supposed to have—it works on the same principle; have pressure on the log so as to hold it down on these drawing rolls that draws the lumber through.

JUROR.—The one you have here I think is operated the same as all other large edgers. This man operating the saw at the time, did he have any long experience with saws of that kind, do you know?

A. I don't know how much experience; he had some experience. I figured he was a pretty good man.

Q. Now referring to Defendant's Exhibit "B," will you hold that up, please, so that some of the jurymen may see; and tell me whether the men shown in that picture are in front of the edger as the lumber goes to it to be sawed, or are they behind it? A. In front of it.

Q. They are in front of it?

A. As it comes to be sawed.

Q. Those levers that you speak of being set to saw the lumber in different widths, who sets them? [85—32]

A. The edger-man sets them.

Q. That is Pete Matesco?

A. That is him right there.

Q. You know Pete, do you? A. Yes.

Q. You know he had any experience as an edger-man? I understand one of the jurymen asked that question. A. I think he had.

COURT.—How long had he been at work there?

(Testimony of Fred L. Nye.)

A. He started when the mill did, the first day.

Q. Now, Mr. Nye, it is hard to judge distances by a picture. The top of that edger as you see it in the picture, about how far is that to the floor? About how many feet, as high as my head?

A. No, it wouldn't be that high. Wouldn't be high as your shoulder, hardly, as I can remember.

Q. Isn't it higher there than the head of this man standing alongside of it?

A. He is leaning over there, he isn't standing up there.

Q. Is Pete a short man?

A. Tall man, I should judge better than six foot. Six foot two, probably. But he is leaning way over there; you can't tell on the picture how tall he is.

Q. Just lets get it clear. Don't you think that was over five feet from the floor to the top of that edger? A. No, I don't.

COURT.—The top of it?

A. Because he could look right over the top of it.

Mr. KING.—From the floor up, your Honor, to the very top. Covering sticks up above there. [86—33]

A. That is covering in there.

Q. How high is the top of that covering in there?

A. From the floor?

Q. Yes, from the floor.

A. I don't think it is five feet.

Q. You don't?

A. No, I don't. I never measured it, so I don't know, just have to go on what I can remember.

(Testimony of Fred L. Nye.)

Q. Your best recollection is, that is five feet?

A. I don't think it is that high.

Q. About four and a half, you think? A. Yes.

JUROR.—Didn't you say you could look right over the top of it?

A. Yes, he could look right over, a man working there about five feet six, and it just comes to the top of their shoulder. I know that on the other side. It was the same all the way across.

Q. Now will you point out on this picture where you would be standing if you were working there at your position?

A. Well, I can't point out. Standing right there where that fellow is standing there.

Q. Clear over here on the other side?

A. Straight in line.

Q. Thirty feet back, is that right?

A. Thirty feet from the last roll. I don't know whether that is me.

Q. Suppose we mark there "N," how would that be, for Nye? A. Be all right.

Q. See that "N"? Is that correct? Is that where you [87—34] would be standing?

A. Yes.

Q. Mr. Nye, you have spoken of the saws inside the edgers. Were these saws set down in the floor, the lower edge of them? A. The saws?

Q. Yes. Are those sunken in the floor? I mean a round space scooped out for the lower part of the saw?

A. No, they wouldn't hardly come to the floor. Of

(Testimony of Fred L. Nye.)

course opening below that, the sawdust—comes centerways. The saws are centerways with that there, right across; the center of the saw is level with the center of that, nearly; just enough to give the pull on the level of that shaft in there.

Q. How much are those saws across in diameter? How far is it across one of them?

A. They would be about thirty-inch saws.

Q. Thirty inches. They are all the same diameter are they not?

A. Well, there is one—there is usually one smaller one. They had smaller saws to start with; use one smaller saw on the back side.

Q. That small saw couldn't be on the same shaft, could it?

A. Smaller in diameter; be just the same size.

Q. Wouldn't reach high enough; attach lower?

A. Saws the slab, small edge; hardly ever use it.

Q. You say these saws are thirty inches in diameter. What is there above the saw?

A. Above the saw?

Q. Yes.

A. They have a frame there with rollers on.

Q. How thick are those rolls, those dead rolls up above? [88—35] How thick are those through, how big diameter?

A. About eight inches.

Q. About eight inches; and then there is guards over these, over the saws, so nothing can fly out?

A. There is.

Q. How much higher than the dead rolls do these guards extend upwards?

(Testimony of Fred L. Nye.)

A. About sixteen or eighteen inches.

Q. And then above the guards, there is still some more covering up top?

A. Some steam-pipes up there.

Q. They are covered up, aren't they?

A. No, they are laying bare, steam-pipes and gas-pipes.

Q. Now, Mr. Nye, as I understand, this cant that was being sawed at the time of the injury to Mr. Simpson, was one inch? A. Was one inch.

Q. Thick. About thirty inches wide, and thirty feet long. Is that right? A. That is right.

Q. And was being sawed into three separate pieces at one operation as it came through this edger, came through the edger and went on through, being sawed into three pieces; here is where it comes on the rolls up here. You say you saw Mr. Simpson line that up, did you? A. Yes, sir.

Q. You were watching him at the time; is that right? A. I watched him, yes.

Q. Then he lined it up by raising up these rolls, did he? The sunken rolls here, the live ones? [89—36]

A. No, he had nothing to do with these rolls, these chains here, they held them up and held the lumber down.

Q. After the lumber was lined up, you say Pete raised up the live rolls to bring it to the edger here. Did you see him do that?

A. I couldn't see him step on the pedals there; they were at the side, but he shifted the edger; it went in the edger all right.

(Testimony of Fred L. Nye.)

Q. Were you watching him? A. Yes.

Q. How much could you see of Pete at that time?

A. I could see more than his head and shoulders.

Q. How much more could you see?

A. Four or five inches more.

Q. Around up here? A. Yes.

Q. You could see both hands, could you?

A. I could see his hand as he handled the lever.

Q. How high would he put his hand up? Just show about what position? A. Just like this.

Q. Just like this?

A. Don't take much strength to do it.

Q. It doesn't. A. No, a finger will do it.

Q. And he lifted it up?

A. Yes, just put the steam in.

Q. And when he lets go of it, the rolls come right down. Is that right? A. Yes.

Q. The rolls come down slowly, do they, or how do they come?

A. They come down fast. You give it release, you know.

Q. Have you had enough experience there that you could judge [90—37] the weight of these dead rolls, how many hundred pounds it would weigh, the roll on each side?

A. I don't think would weigh more than 200 pounds.

Q. Apiece? A. Apiece.

Q. That is your best judgment of them?

A. That is my best judgment.

Q. Now of course you never made any study of edgers? A. No.

(Testimony of Fred L. Nye.)

Q. They might weigh five hundred pounds, as far as you know?

A. I am sure they wouldn't weigh that.

Q. Aren't they solid?

A. No, I dont think they are.

Q. Anyway pretty heavy; you are sure they won't weigh that much? A. Yes, sir.

Q. You have never seen one of these valves apart? A. No, sir.

Q. Never saw the inside of it? A. No.

Q. When the lumber went in—the lumber is lined up, that piece Simpson put on there to be sawed; Pete Matesco brought up these rolls and brought it up to the edger, and then lifted up this dead roll and started off with the saw? A. Yes, sir.

Q. Then the dead roll was dropped on top of it, is that right? A. That is right.

Q. Then it started through and kept on going through and of course when it came out this other side that dead roll would be on top of it too, wouldn't it?

A. It would if pressed down hard enough.

Q. And came out on the other side and came clear out here; you say two of the three pieces stayed on the other side? [91—38]

A. They did.

Q. Then the third piece that they were cutting it into stopped, did it?

A. Just far enough so I couldn't get hold of it. I might have pulled it.

Q. You couldn't reach it? A. No.

(Testimony of Fred L. Nye.)

Q. You say it stopped? A. Yes.

Q. Did you yell at anybody when it stopped?

A. No.

Q. Did it come to a distinct stop? A. It did.

Q. Still, was it, for a second? A. Yes.

Q. Then you say Pete, who was standing here on this side, lifted up the dead roll and looked under there to see what was the matter? A. He did.

Q. Did the dead rolls both lift up in the air?

A. They did.

Q. After they both lifted up in the air and were up above here away from the piece, this third piece shot right back through here and went out, and went on over and struck Mr. Simpson? A. It did.

Q. You saw it hit him? A. I did.

Q. Now, when Pete Patesco lifted up the dead roll on the side where you were, how many inches did he lift it up? A. Lifted clear to the top.

Q. Lifted the full twelve-inch space you said?

A. Yes, sir.

Q. Did both of the dead rolls raise up and lower at the same time? The same lever makes them both raise up and both fall? A. They do.

Q. It takes steam. It takes the letting in of steam to [92—39] raise them up? A. Yes.

Q. When you let go the lever they drop; the steam comes out? A. Yes.

Q. Now, while this piece was going through the edger, the one that was in the edger at the time of the accident to Mr. Simpson, you didn't have anything to do at that time, did you?

(Testimony of Fred L. Nye.)

A. When it was going through the edger?

Q. Yes. You wouldn't have any duties then, would you? A. No.

Q. It is only after the piece has arrived on the other side that you have to do anything taking it away, is that right?

A. As soon as it comes down to me. I wasn't supposed to go to the tables.

Q. I don't intend to criticize you at all. I was just asking for information. I wanted to know. I want to know about operating the edger. I want to know while the edger is at work, the piece coming through, do you have anything to do at that particular time? A. I do, sometimes.

Q. But on this particular occasion you didn't, is that right? A. I didn't, no.

Q. Do you remember what piece was sawed just ahead of this one? A. No.

Q. Whatever that was, you had put that away, had you? A. Yes.

Q. And now the table on which these pieces lay after they [93—40] came through the edger, that is on the same level as the rolls which feed the edger is on, some distance from the floor, isn't it?

A. Some distance—yes, the rolls that raise up, they are about the same level.

Q. Yes, that is what I mean. He raises up these live rolls and that carries to the edger and it goes through the edger and comes to the table on the rolls there; they come on the same level as the live rolls which raise up? A. Yes.

(Testimony of Fred L. Nye.)

Q. By "he" I refer to the edger, Pete Matesco?

A. Yes.

Q. How high was that table on the far side of the edger? How far did that come up to you; stand up and show the jury just how high that table came on you? A. Behind the edger?

Q. Yes, the table behind the edger.

A. (Indicating.) About this high on me, where I was standing.

Q. You would indicate then it came up just about even with your hips, is that right? A. Yes.

Q. To put that into feet, would you say that would be about three feet, would it, or a little over?

A. Be about three feet, wouldn't be over that.

Q. Now, did you have any lever to operate?

A. I did.

Q. When were you required to operate levers?

A. When I was dumping slabs; by the same lever rolls that come down from the head rigging.

Q. Now, every piece that came down from the head rig didn't go through onto the edger-rolls, did it? A. No. [94—41]

Q. A good many of them kept right on down the conveyor, is that right? To make it clear, here is the conveyor coming down from the head rigger?

A. Yes.

Q. Not every piece came off on to the rolls of the edger, did it? A. No.

Q. A good many of them were let down this back end, that is, you let them *do* on down. When they did that you dumped the slab down below that?

(Testimony of Fred L. Nye.)

A. Yes.

Q. And if they wanted to put a piece over the edger-rolls, if they thought the proper kind of a piece, they run up this bumper and Simpson would put over on the rolls, is that right? A. Yes.

JUROR.—All the pieces went through that edger except slabs? A. Yes, and timber.

Q. And in order to make it plainer, this was in a continuous stream coming down from the head rig; there would be a good many pieces that came from the saw carriage that would go on down to the gang-saw and would never come down on this conveyor chain at the side of the picture?

A. That is right.

Q. The larger pieces would come down to the gang-saw, wouldn't they?

A. Well grades, different grades.

Q. On the average it would take big pieces on the edger, wouldn't it? A. Yes, it would.

Q. Now, Mr. Nye, do you want the jury to understand—to make it clear: Suppose there wasn't any lumber there at [95—42] *at* all on the rolls leading to the edger; suppose they were entirely empty, and suppose Pete Matesco was not holding up this lever on the valve. Do you want the jury to understand that the dead roll would not come down and touch the live roll in front of the edger, and also the dead roll do the same thing in back of the edger?

A. I will have to ask you to repeat that.

Q. Suppose no lumber in there at all, in the

(Testimony of Fred L. Nye.)

edger machine; you want the jury to understand that this dead roll would be up in the air and not touching the live roll?

A. Yes, it would be up—it was that way so it would be up some space; bound to be a little.

Q. Why bound to be a little?

A. Because they couldn't saw anything less than one inch, wouldn't come clear together—half inch apart—it ought to be that way.

Q. What would hold it up in the air, what force would hold it up in the air if there was no steam on and no timber in there?

A. There wouldn't be no holding up in the air if didn't have no steam.

Q. That is what I said; it would rest right on the live roll down below, wouldn't it?

A. Rest down.

Q. Come clear down and touch the live roll, wouldn't it? A. It would.

JUROR.—You don't mean that, do you?

COURT.—What did you mean a short time ago when you said the dead roll would not come within two inches of the live roll? [96—43]

A. It wouldn't when the steam was on, when they are working it there.

COURT.—When the steam was on? A. Yes.

COURT.—What was the steam on for, to raise it or lower it?

A. The steam was there to raise or lower it.

COURT.—The steam was used all the time?

(Testimony of Fred L. Nye.)

A. Used all the time. I never saw it when wasn't steam there.

COURT.—I thought the way you testified that they left the steam in to raise the roll, raise it up, then shut the steam off and the rolls came down of their own weight.

A. A double valve, works up and down both.

Q. Always steam there?

A. Always steam there?

Q. Mr. Nye, that raises another question. I thought you said you had never seen the inside of one of these valves.

A. That has been explained to me.

Q. I mean, you don't know of your own knowledge what it does, do you? A. No.

Q. That is right?

A. That is right. I don't know, but been explained to me that way.

Q. Let me repeat my question. Supposing there is no timber coming through the edger so that the timber itself would not separate the rolls; there is no timber there; suppose the edger-man has let this throttle down; he is not holding [97—44] it up; wouldn't that dead roll touch the live roll in front of the edger?

A. I never seen it when it touched clear down.

Q. You have never seen it when it touched clear down? A. No.

Q. Did you ever look at it then? A. I have.

COURT.—How close would it come to the live roll?

(Testimony of Fred L. Nye.)

A. Well, it would be an inch and a half or two inches, as near as I can remember.

Q. Now, Mr. Nye, if it were an inch and a half or two inches it would not touch a one-inch piece of lumber at all, would it? Is that right?

A. Probably it would, chousing it up and down; they used to chouse it up and down, and bound to go through there you know.

Q. I will ask you, did it touch piece of timber that was going through, the piece of lumber that was going through at the time Mr. Simpson was hurt?

A. He had to give a couple of jerks, give it a jerk on this; do that, and it would pound down on it; pound it through, you know.

Q. You saw Pete Matesco you say give this lever a couple of jerks? A. Yes.

Q. You don't know why he did it?

A. Why, did it on all them that didn't go.

Q. After he got done giving it the couple of jerks, it then rested on the piece of lumber?

A. Not very solid, no.

Q. Not very hard? A. No. [98—45]

Q. Could you tell by looking at it thirty feet away, how hard it rested on the lumber?

A. I could tell if it had been any space between, it wouldn't have went.

Q. What?

A. If been any space it wouldn't have went, the lumber wouldn't have went through.

COURT.—What do you mean by space?

A. Space between the roller and the lumber.

(Testimony of Fred L. Nye.)

COURT.—You mean the lumber would not pass on through unless held down by the upper roller?

A. No, it wouldn't; that is right.

COURT.—If the upper roller was up two inches and it was a one-inch board they were sawing, it would not have gone through? Is that what I understand? A. Yes.

Q. Now, of course, you couldn't see the dead roll on the other side of the edger from you?

A. No, I couldn't see that roll.

Q. But at the time that the piece was coming out on your side of the edger, on the bearing off side of the edger, the dead roll was then resting on the piece of lumber, wasn't it?

A. It was, as near as I could see.

Q. Now, you say it was resting some; could you tell how hard it was resting?

A. No, only judging by the timber not all coming through.

Q. In other words, it is your conclusion from the fact that one-third of this slab of lumber didn't come through; [99—46] it is your conclusion that the rolls didn't rest hard enough on the piece of lumber. Is that right?

A. That is the way I figure.

Q. Well now, Mr. Nye, it rested hard enough on that lumber to cause it to come all the way through but a short part of the distance, didn't it?

A. Yes, it did.

COURT.—Do you understand that question?

(Testimony of Fred L. Nye.)

Did this piece of lumber that struck Mr. Simpson come through the second roller at all?

A. No, it didn't come through the second roller?

COURT.—I thought that is what you testified; but in your answer to counsel's question you implied that it did. He said two pieces went through, but the third one didn't.

Mr. KING.—He meant didn't come clear through.

A. You asked me if it went past the first roller.

Q. Lets go through it again, I want it straight. Now, the edger-man, Pete Matesco, raised up these live rolls? A. Yes.

Q. And it had this piece of lumber on it?

A. Yes.

Q. And you brought the piece of lumber up to this first live roll and the first dead roll, did you?

A. I did.

Q. Pete Matesco raised up the dead roll, did he?

A. He did.

Q. Sure he raised it up?

A. I don't know whether he raised it or not, it went in there.

Q. You didn't see him raise it then. What is your recollection of that, did he raise it? I understood [100—47] you to say a while ago he did raise it.

A. I said he did raise it, is what I said.

Q. Is that true? Did he raise it?

A. He did, as far as I can remember.

Q. Now, it came into the saw, didn't it?

A. It came into the saw.

(Testimony of Fred L. Nye.)

COURT.—And he let the roller down again, did he?

A. He let the roller down; always raises it for every piece of timber.

COURT.—And then lets it down again on the timber? A. Yes.

Q. So that timber started to go into the saw then, didn't it? A. Yes.

Q. That was being cut by two saws so it would make three pieces? A. Yes.

Q. And the pieces began to come out over this live roll on the other side, and between the live roll and the dead roll on the other side of the edger, this side you were on, is that right? A. Yes.

Q. All three of them went through, started?

A. All but one.

COURT.—He said two went through, the other didn't. A. Two went through.

Q. You mean two pieces stuck their nose out here, but one didn't?

A. All went through until got past this,—all went through until got past this roll here.

Q. Let's take the end of the timber; let's take the back end of the timber that is going into the saw; where was [101—48] the back end of the timber when it started in there over that last—where was it when the timber stopped and began to come back, the tail end of it?

A. The tail end of it, right there, between the saws.

Q. The tail end was in the saws?

(Testimony of Fred L. Nye.)

A. Yes, and two went in, the two pieces, and this other one stayed there.

Q. And kicked back?

A. And kicked back when he raised up the rolls.

Q. When he raised up the rolls? A. Yes.

COURT.—But the third piece, the one that struck Simpson, didn't it go over the second roll?

A. No, it didn't.

Q. Let's get that clear.

COURT.—That is what he said.

JUROR.—He has explained that five or six times. Two pieces went through and one stopped there and kicked back.

Q. I want to know where the back end was that stuck there.

A. Right in there.

Mr. KING.—Judge Bean, this back end never reached the saws.

COURT.—The one going toward the saws or away from the saws?

Mr. KING.—I call it the tail end, the last piece. The one that kicked back was in that position. Is that right? A. Yes.

COURT.—It had gone through the roller?

A. That is the way I understood the question.

COURT.—You have been testifying, as I understood, [102—49] you, that the third piece never went through the second roll at all, never went into the second roll.

JUROR.—All went through.

A. Let me explain that. The timber went

(Testimony of Fred L. Nye.)

through—all of it went through there, past this first roller; the two pieces went on and the other piece stayed between these two.

COURT.—The rear end of it.

A. The rear end of it, yes.

COURT.—And kicked back this way.

A. Yes.

JUROR.—The facts of the case are that the saw had to cut the full three pieces before the two could go on and one stay there; it certainly was cut, you say. A. Yes.

Mr. KING.—It was cut at the time it stopped?

A. It was.

Q. Clear cut? A. Yes.

Q. Now, let's get that straight. The slab had been clear cut at the time this one piece stopped. It was all cut into three pieces, is that right?

A. Yes, that is right.

Q. In some way or other the roll was raised and two pieces went out at your end of the edger, the other piece, after Matesco raised the roll, that went clear back in through there?

A. Came clear back through.

Q. Through this other roller, and went clear back out through the end. Is that right?

A. That is right.

COURT.—I understand now. I couldn't see how [103—50] the saw could throw it back if it had passed there.

Mr. KING.—I had some difficulty.

Q. Take this stick and assume that it was the

(Testimony of Fred L. Nye.)

width of that piece thirty feet long and thirty inches wide, and show where the piece was at the time the two pieces fell off and the other piece stopped; just shoved through; the machine was there, and shoved through.

A. Run just to the end of the saw.

Q. Started in here, in under these rolls here, and began to come through coming in between these two, came on through, came on through and got clear through the saw?

A. No, no. Not through the saw; to the edge of the saw.

Q. And then two pieces of it went on through these other rolls?

A. And that one stayed there.

Q. And after it stopped Pete Matesco raised this roll? A. And the rolls opened.

Q. And the third piece kind of swung to one side and kicked back clear through there. Is that right? A. That is right.

Q. I guess I don't get that. How far is it, Mr. Nye, between the dead roll on one side of the edger, right through the saws, you know, measuring right through the saws—how far is it to the dead roller on your side of the edger?

A. About three feet through there.

Q. About three feet. Three feet you say from here to here? A. Yes.

Q. Three feet from this roll to this roll?

A. Yes. [104—51]

(Testimony of Fred L. Nye.)

Q. And you say the saw in there was thirty inches? A. Yes.

Q. In diameter. Now Mr. Nye, directing your attention to this drawing, I will explain it. This represents the edger looking down on top of it, on the dead roll; that would be the dead roll on your side. A. Yes.

Q. This would be the dead roll on the side where Simpson was working? A. Yes.

Q. And here would be the dead rolls and mingled with the live rolls, you see, in front. Now here is the chain that brings the pieces of lumber over from the conveyor, that runs along there, and here are the chains that are running off in this direction to move the lumber back over against the pointers to line it up.

A. That is right.

Q. In other words, these chains are running that direction and these over here are always moving that direction, so if Mr. Simpson or the operator brings the piece of lumber off the conveyor and brings it over here and over right up to the right-hand side of the edger, he can still have this other chain and move back over against the pointers along there, can't he?

A. That is right.

Q. You say this piece of lumber went back so fast you couldn't see it?

A. Just saw a streak of it, couldn't see the shape of it, whether went in two or three pieces. I say you could just see a streak of it.

(Testimony of Fred L. Nye.)

Q. You could see it coming out of your side of the edger? [105—52] Couldn't you?

A. Yes.

Q. You saw it stop? A. Sure I saw it stop.

Q. Anything else ever cause a piece of lumber coming through the edger to stop?

A. Yes, I have seen large timbers stop.

Q. Not only one inch pieces stopped, were they?

A. No, not only one inch.

Q. Large pieces stop also?

A. Yes, they were stuck, they killed the power.

Q. Sometimes they killed the power?

A. That is the only reason then.

Q. Don't the larger pieces kick back sometimes when the saw strikes a twist or knot or a splinter comes in alongside the saw and causes it to heat and bind?

A. I never seen one kick back on account of being bound, though, with any force.

Q. Did you ever see any saw kick back because a splinter got down inside the edger and caused it to heat?

A. Have seen it get hot, couldn't go through.

Q. You never saw a piece kicked back that way?

A. That is right, I never did.

Q. In other words, when you worked for the McCormick people, did any pieces kick back?

A. Well, I didn't see them, but I heard about a couple.

Q. And the rolls there didn't touch either, did they?

(Testimony of Fred L. Nye.)

A. They were large timbers kicked back through, both large pieces.

Q. Did the rolls touch those large timbers?

A. They did. [106—53]

Q. What?

A. They did, but that was on account of a knot, or something.

Q. You say a knot in the piece that kicked back at the McCormick mill?

A. I didn't see it, he told me. He told me knots caused them to kick back because it would raise the roll and that would give the space.

Q. I didn't hear.

A. I say would raise the rolls in going in, and that gives a space, and they kick back.

Q. The knot would raise the rolls? A. Sure.

Q. Didn't that piece kick back before Pete Matesco raised the rolls? A. It did not.

Q. What? A. It did not.

Q. You are sure of that?

A. I am sure of that.

Q. This edger was the same general type of edger that was used in the McCormick mill?

A. No, different.

Q. What difference?

A. It was a little heavier.

Q. A little bigger edger? A. Yes.

Q. And heavier safeguards on it too, didn't it have?

A. It did, yes.

Q. It was heavier construction throughout?

(Testimony of Fred L. Nye.)

A. It was.

Q. Had much heavier roll on the top of the saw —dead rolls? A. Yes, sir.

Q. Eight inch dead rolls are pretty large dead rolls? A. Yes, sir.

Q. Just one other question that occurred to me. [107—54] Can you speak the name of any edger that never kicked back? A. No.

Q. What? A. No, I cannot.

Q. Well, now, Mr. Nye, there is one other question. I would like to ask you whether your sympathies are with Mrs. Simpson in this case.

Mr. MOULTON.—I object to that question.

Mr. KING.—I think I am entitled to show.

COURT.—No, not a question of sympathy; that wouldn't be competent.

Q. Were you subpoenaed to come here?

A. I was not.

Q. How far is it from here to American Falls?

A. I don't know just how many miles.

Q. Over six or seven hundred, isn't it?

A. Over seven hundred.

Redirect Examination.

(Questions by Mr. MOULTON.)

Mr. Nye, how often had the boards thrown out of that edger while you were working there?

Mr. KING.—Object to that as not material.

COURT.—You asked about other boards thrown out of there.

Exception saved.

(Testimony of Fred L. Nye.)

A. Four different times that I remember.

Q. When they did fly, did they always fly straight right along that line? A. They did not.

Mr. KING.—Same objection and exception. [108—55]

Q. To get an idea, if a man lined up there, if he stood over to one side or the other, would he be out of the path of these boards as they fly?

A. He wouldn't be entirely safe, no.

Q. How much space did they fly over when they did fly?

A. I have seen them go straight out to the head rig, pieces, just small pieces.

Q. What was your observation—Mr. King has spent some time on that—what was your observation as to the solidity with which these rolls rest down on pieces like one inch and an inch and a half pieces?

A. They don't set down solid into it, because they jar up and down on that, and they will get them to go unless its gets hot or something, and that didn't do any good.

Recross-examination.

(Questions by Mr. KING.)

Just another question. I think you covered that before, but there isn't rollers on all sides of this outer roller—there isn't rollers to the side, there isn't any rolls over here or isn't any rolls there is there?

A. Rollers there and rollers there.

(Testimony of Fred L. Nye.)

Q. Now, when this piece came back and struck Mr. Simpson, he was standing here where you marked "S" was he not?

A. As near as I could tell he was not.

Q. How did that piece come back? Just where did it come? A. Comes straight back.

Q. Straight back. A. As near as I could tell. [109—56]

Q. Now these other four pieces we referred to, just tell where they went.

A. I saw one go right across here, right across; these pieces fly right around here where a man has to stand in there when he is taking over these timbers.

Q. You have seen them do that? A. Yes.

Q. At the Oregon-American Mill there at Vernonia? A. Yes.

Q. You saw them do that? A. Small pieces.

Q. Pete Matesco was working there too, wasn't he? A. He was.

Q. He would see them too; he was edger-man?

A. He surely would.

Q. Who else saw them there, those four pieces?

A. The line-up man would see them. I have seen them dodge, duck down.

JUROR.—That wouldn't be possible only with small pieces.

A. Small pieces is what I said; just small pieces.

Q. Would you say a thirty-foot piece would fly like that?

(Testimony of Fred L. Nye.)

A. No, I wouldn't—small pieces, three or four foot long; slab broke off in the woods.

Q. Do you want the jury to understand this thirty-foot piece coming back through there would likely come anywhere but straight back over the rolls?

A. It could vary a little, that is if coming down its full length, and the saw cut it in a couple pieces; it might do that.

Q. The saw would cut it in a couple of pieces? [110—57]

A. It might do that, yes.

Q. Did you ever see that done?

A. I have seen that done.

Q. See that at the Oregon-American mill at Vernonia? A. I have.

Q. Pete Matesco was there at that time too?

A. Seen them line timber up that wasn't any good—

Q. Pete Masteco was there at the time the saw cut it in several pieces, was he?

A. I guess he was.

Q. He was running the edger then, was he?

A. I guess he was.

Q. He would have seen that too, wouldn't he?

A. Yes, he would.

Q. Who else would have seen it?

A. I don't know who else would have seen it.

Witness excused. [111—58]

TESTIMONY OF P. H. ENDNER, FOR PLAINTIFF.

P. H. ENDNER, a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. MOULTON.)

Where do you live, Mr. Endner?

A. Down at Railhead at present.

Q. Where is that?

A. That is on the Natron Cut-off.

Q. What is your occupation?

A. Mill superintendent.

Q. What mill are you working in now?

A. Wibel Lumber Company.

Q. What experience have you had in sawmills?

A. Most all there is.

Q. How long have you worked in sawmills?

A. Thirty-five years.

Q. What various measurements or capacities have you worked in?

A. Twenty thousand to three hundred thousand mill.

Q. What kind of work have you done in these mills?

A. Millwrighting, running edger, superintendent.

Q. How long have you been superintendent of mills? A. Last twenty years.

Q. How much has been as a millwright?

A. Millwright and superintendent, and generally works together.

(Testimony of P. H. Endner.)

Q. How much have you run gang-edgers?

A. Have to do that all the time when there is a edgerman off; the superintendent generally takes his place.

Q. Are you familiar with the various makes of gang-edgers [112—59] that are used on this coast? A. Yes.

Q. Do you know the Filer & Stovel edger?

A. Yes, sir.

Mr. MOULTON.—Do you concede this is a Filer & Stovel edger?

Mr. KING.—Yes.

Q. Now will you explain to the jury the mechanics of the valves that are used in such machines as the Filer & Stovel to lift the dead rolls.

A. Well, they are run by steam. There is a steam cylinder sets on the edger of the edger, on each side of the edger, and this pipe is a half inch pipe from below, runs up through a framework on the side of the edger. That feeds the cylinder. When this edgerman lifts the lever, it lifts the rolls; when he drops it that rests the bearing rolls on the lumber.

Q. Will you try to explain to the jury the mechanics of these valves on that cylinder, how the valves admit the steam and how it releases it, how it acts to raise these rolls up.

A. When he raises the rolls or lever it lets the steam in, and when he lowers the lever it lets the steam out—holds it.

Q. Does the steam come in or out from more than one end of that cylinder? A. The lower end.

(Testimony of P. H. Endner.)

Q. It comes in and out from the lower end?

A. Yes, sir.

Q. When the edger is in operation and the steam is on in a power plant of a mill, and the saws are running, if [113—60] the edger stands at rest, where do the rolls rest?

A. Well, they rest down.

Q. Do they rest solidly upon the driven rolls below them? A. No, sir.

Q. How close do they come?

A. That is according to how they set them. Right at inch stuff they might be—not within seven-eighths of an inch.

Q. Who controls that? A. The edger-man.

Q. How does he control it?

A. By a bolt inside the framework; when his top roll comes down it rests on this bolt and that bolt is put in there by nuts, jam nuts. If he wishes to lower the roll a little lower, if they are cutting lots of inch, he lowers that so that the roll fits down tight on that inch stuff.

Q. About these edgers, I wish you would explain to the jury the theory of their operation, why it is they have rolls that way on top and driven rolls on the bottom; what is the purpose and theory of that?

A. The lower rolls or corrugated rolls, some of them have spikes in them, called spike rolls, little thin spike teeth; they grab hold of the plank and the top one presses it down on the bottom roll so as to keep it in its place.

Q. If the edger is in any wise adjusted either by

(Testimony of P. H. Endner.)

valves or otherwise so these rolls won't come down with full force on the boards that are driven to them what is the result of the operation of the edger —what happens?

A. Well, lots happens sometimes. [114—61]

Q. Suppose you had a case where your steam won't release out or anything, any condition of these valves so that when the lever is released these rolls don't come down solidly on the board, but stay up a little.

A. The edger-man generally gets ready and puts his hand on the cant, holds the cant, and gives the lever a jerk; lots of times a little friction or kink gets in.

Mr. KING.—I can't hear.

A. Lots of times a little scale in that valve that plugs the little hole, and he releases it, and the second time he does that his cant goes on.

Q. Suppose his valves are in such a condition from some cause that the full weight of the rolls won't come down on the board?

Mr. KING.—I object to him assuming a fact not in evidence. I think it is purely speculative, and no foundation for it.

COURT.—Evidence the rolls would not come down.

Mr. KING.—No evidence about any condition of the valves.

COURT.—No, but he can ask why they didn't come down on that. He is an expert and can explain if he can the reason why they would not come down on the roll. Some defect of some kind.

(Testimony of P. H. Endner.)

Q. What would keep the rolls from coming down full force on the board? A. Valves out of order.

Q. What would be the matter with the valve that caused that condition? [115—62]

A. Well, either a piece of cylinder off the inside corrugation, that would plug this hole and keep this valve from working up and down.

Q. If a condition of this kind existed so the roll don't come down full force on the boards, what effect does it have with respect to the operation of the edger, what happens?

A. They generally go after the steam fitter.

COURT.—Suppose they undertook to operate and run the board through. A. They don't do it.

COURT.—Suppose they do.

Q. If they do, what would the board do?

A. Liable to tear the machine to pieces.

Q. What effect does it have on the liability of the edger to cause the board to kick back?

A. There is different ways for a board to kick back. Lots of times—the way you are talking—I can feed an edger by hand, feed that in through and still hold my roll down by hand, and press it until them valves do work. There is lots of time a man will come up there and if the valve refuse to work, we call the engineer. He takes care of the steam system, and he takes a wrench, and loosens that valve and tightens it again. The edger-man does that before he puts in another board.

Q. I don't think you get my question. What I am trying to get at is, if a board is put in and run through when the valve won't force the rolls

(Testimony of P. H. Endner.)

down with full force, what effect does that failure to come down with full force [116—63] on the board have upon the liability of the edger to throw the board back?

A. Well, if you run a board through, and what causes it to break, to fly back if the board is through the first roll at the head of the machine, lots of times a check in the board; the other two go by, and this one sticks, and that little piece that fails to still hangs to this piece there, if this roller is raised, release that pressure, it will come back; what you call fly back.

Q. What will it do if the roll comes down with full force? Will it fly back the same way if the roll comes down?

A. No, it will come on through, but that piece will break off and drop down into the conveyor.

Q. When these machines are in proper adjustment, such as the Filer & Stovel edger, and the valves working all right, and the machine properly operated, are they liable to kick back boards?

A. No, not very often.

Cross-examination.

(Questions by Mr. KING.)

Mr. Endner, you say you never saw an edger kick back?

A. Oh, yes. I didn't say that.

Q. What? A. I didn't say that.

Q. I mean that one that was properly kept.

A. At times, yes.

(Testimony of P. H. Endner.)

Q. I beg your pardon. Where did you say you operated a Filer & Stovel edger?

A. Southern Oregon. [117—64]

Q. What mill? A. Ballett Lumber Company.

Q. When was that?

A. That is seven or eight years ago.

Q. How long did you operate the edger there?

A. About an hour.

Q. About an hour?

A. Well, sometimes two hours. If the edgerman wanted to go for a drink or somewhere, I would have to fill in and take his place.

Q. That is all the experience you have had with a Filer & Stovel edger? A. Yes.

Q. You took the valves apart, of course?

A. Oh, no, no, I didn't say I did.

Q. Had you ever seen the insides of these valves?

A. No, no; never had any occasion to.

Q. You don't want the jury to understand, do you, that that is the condition of these valves then you are testifying to when you have never seen the inside of a valve.

A. Well, we are supposed to know what is in there, but not see it.

Q. Do you know what is in there?

A. Yes, I know.

Q. What is in there? A. Steam in there.

Q. How is the valve made?

A. Well, just made the same as a cylinder; just like setting one glass into another. [118—65]

Q. Is that the way the valve was made?

(Testimony of P. H. Endner.)

A. Yes.

Q. You are positive of that, are you? A. Yes.

Q. And the Filer & Stovel edger that you are talking about has a valve just like that?

A. They all do. All the same. All cylinders are the same.

Q. What is inside the smaller glass? What is in that? A. What is in?

Q. You say a valve is just like slipping a small glass inside of a big one.

A. Just like putting a valve in a pump to pump water with, sure.

Q. And you say that the valve of the Filer & Stovel edger is like slipping a cylinder in which would of course fit tight down inside of another cylindrical glass? A. Yes.

Q. What kind of grooves are on this inside cylinder?

A. There is a valve on the end of that that raises a plunger, and raises and lowers the steam.

Q. Goes up and down like that, that valve?

A. Yes.

Q. Did you ever see a Filer & Stovel edger with that kind of a valve? A. I never did.

Q. They are not equipped with any other kind of a valve?

A. Never seen any other kind of an edger that was equipped with any other valve.

Q. Mr. Endner, I hand you this and ask you to tell us what it is.

A. That is a valve stem, isn't it? Isn't this your valve stem? [119—66]

(Testimony of P. H. Endner.)

Q. I am asking you.

A. That is a valve stem, isn't it?

Q. I am asking you, Mr. Endner.

A. I am telling you that is your valve stem. This plays inside the cylinder.

Q. It plays inside?

A. Yes, when he lifts this valve to inject the steam, this goes up and down.

Q. You mean this piece inside here goes up and down? A. Yes.

Q. That is right, is it? A. Yes.

Q. That is a Filer & Stovel valve?

A. Well, I don't know.

Q. On the edger.

A. Well, I am taking your word for it.

Q. I am asking what it is? A. I don't know.

Q. Did you ever see one of these before?

A. No, sir.

Q. You say that is not a Filer & Stovel valve for the edger?

A. No, I couldn't tell whether it was or not; so many different kinds made so near alike. The Portland Machinery Company make one just like that. There is where your steam comes in, and here is where it goes out when it works.

Q. And that goes up and down? A. Yes.

Q. You are sure of that? A. Sure.

Q. You are sure that goes up and down?

A. Yes.

Q. Now, Mr. Endner, let's be fair with one an-

(Testimony of P. H. Endner.)

other. You never had one of these valves apart, did you? A. No, sir. [120—67]

Q. You don't know where the steam comes when it comes in or where it leaves from that valve?

A. We don't have nothing to do with that. That is the machinist's part. The machinist takes care of that.

Q. Now, let's take it one step farther. You say that an edger, if the valves are in proper condition, will never kick back. Is that right?

A. No, sir, it can't.

Q. It can't kick back?

A. No, sir, it is impossible.

Q. Well, now, how did you form that conclusion?

A. Well, if the rolls are down on the piece of board, there can't nothing kick back unless the edger lifts them rolls unbeknown to himself.

Q. Yes, but the edger-man uses steam to lift the rolls, doesn't he?

A. Yes, and as he holds the lever down to keep the rolls down so the steam can't lift the rolls unbeknown to him.

Q. Are you sure about that? Does he have to keep his hands on that lever to hold the dead rolls down?

A. Yes, sir. When he takes his hand off them rolls, is taking a chance them rolls fly up.

Q. What will make them fly up?

A. A little piece of bark or anything.

Q. You don't mean they use steam to hold the rolls down do they? A. Sure they do.

Q. You are sure of that? A. Sure. [121—68]

(Testimony of P. H. Endner.)

Q. You are sure that is so in the Filer & Stovel edger? A. So in all edgers.

Q. So with all edgers? A. Yes.

Q. So they both use steam to raise the dead rolls, and they use force to hold them down?

A. That is what they are putting them down for, yes.

Q. You are sure of that? A. Yes.

Q. Now, isn't this a fact, that they use steam to raise these dead rolls, and that when they want them lowered, they shut off the steam, and the dropping of this lever opens the exhaust and the steam runs off and lets the rolls drop. Isn't that so? A. What holds them there then?

Q. Their weight. Isn't that right?

A. No, sir, it isn't.

Q. How much would you say the dead rolls on the Filer & Stover edger weigh?

A. They weigh eighty or ninety pounds apiece.

Q. How thick through are they? How much diameter?

A. From four inches to the size of the edger. I don't know what size edger they have.

Q. Assuming one of the large size edgers?

A. Ten inches.

Q. Would be ten inches through?

A. A ten-inch edger has got to have six-inch roll or eight-inch roll.

Q. What is the largest size an edger will make?

A. Twelve inches.

Q. What size dead roll has it got?

(Testimony of P. H. Endner.)

A. Eight inches. [122—69]

Q. Aren't those solid? A. No, sir.

Q. They are hollow, are they? A. Yes, sir.

Q. You are positive of that? A. I think so.

Q. And they weight ninety-five or a hundred pounds? A. Not a big one, a light one does.

Q. How much does a big one weigh?

A. About two hundred.

Q. You say they use steam to press these down all the time?

A. Yes, sir. Steam, air, or electricity, either one.

Q. Which mills use electricity?

A. Well, the Peninsula Lumber Company.

Q. They use electricity to hold this dead roll down, is that right?

A. They have an electric edger.

Q. What holds the dead roll down in one of these electric edgers? A. Electric power.

Q. Power?

A. They just use electric instead of air or steam.

Q. Just explain to the jury how they cause electricity to open the rolls.

A. Done by a little motor.

Q. The motor causes the roll to roll, or what?

A. Causes it to raise or lower.

Q. Now, there is an arm off there or lever that regulates this, isn't there? A. Beg pardon?

Q. There is a lever on this valve that regulates the bringing of the steam in and letting it out. [123—70]

(Testimony of P. H. Endner.)

A. That is what the edger-man does with the lever in front of him.

Q. Can you look at the picture there and see the lever?

A. I can't see that lever, but I can tell you where the lever is.

Q. See if you can see it on this one.

A. That is a double edger.

Q. Did you ever see a Filer & Stovel double edger? A. Yes, sir.

Q. What mill did you see that in?

A. Vernonia mill.

Q. You worked out there, did you?

A. No, sir.

Q. You made a special trip out there, didn't you?

A. I made a special trip out there to get a job; that is, superintendent of the mill.

Q. Are you working for them now as superintendent? A. No, sir, I am not.

Q. And you can't see that lever on there?

A. I can't, no, sir.

Q. Can you see the picture without your glasses?

A. Yes, that.

Q. But you mean you can't locate the lever?

A. I can locate it, yes, but I can't see it. I know where it should be.

Q. Now, let's take this proposition: Here is a lever. I am the edger-man; you have seen this edger, and I haven't. I have just studied this from what I have been able to learn. I am

(Testimony of P. H. Endner.)

the edger-man. Here is the edger in front of me. The lever is over here. I use the right hand to use it, don't I? [124—71]

A. According to what kind of a machine it is; right or left?

Q. Do they make left-hand edgers?

A. The way you stand, yes.

Q. As far as I am concerned, I will use the left hand, then, as you say for a left-hand edger?

A. Yes.

Q. I take hold of this lever here; the lever sticks out from the edger a ways?

A. Right over the top of the roller.

Q. Not as long as that. The handle is about that long, isn't it?

A. Lays lengthwise of the rolls.

Q. Rises up and down like that; doesn't go up and down like that?

A. I don't know how it is fixed over there. Most of them lift right up, leave the roll at the top of the edger.

Q. This handle leaves the roll and got a piece running down to the cylinder, hasn't it—the valve?

A. On the end.

Q. Two pieces run in. Just take now where the valve is over here at this end, and has just a straight arm running out from here and a handle here. I take hold of the handle and raise it up, and that lets in steam? A. Yes.

Q. How do you let the steam out? A. Down.

Q. Let down? A. Yes.

(Testimony of P. H. Endner.)

Q. What was the position the lever was in when you turned in the steam to hold the roll down? A. Down. [125—72]

Q. Clear down here? A. Yes.

Q. When here the cutter is off? A. Yes.

Q. Is that a fact?

A. Yes, you can let all of the steam out of the cylinder, or half of it. If you cut ten by ten or eight by six, or ten by twelve, your cylinder is still half full of steam. If you put through a one inch board, your cylinder is almost vacant of steam.

Q. What is that? The same pressure of steam all the time, isn't there? A. No.

Q. You mean there are two different streams of steam that flow into that cylinder? A. No.

Q. I am not much of a mechanic, but a cylinder can only run one way, can't it? The steam just pushes it out one way?

A. Which is out one way and in the other. When this lever comes down—when the cylinder comes down inside of it, that forces that steam out. The lower you lower that cylinder, the less steam will be in there, with the exception of a little bit under the valve.

Q. This is true of these edger cylinders, is it Mr. Endner? A. It is true of all cylinders.

Q. You are thinking of locomotive cylinders, aren't you?

A. No, I am not thinking of locomotives. I am thinking of edger cylinders, log cylinders, or any.

(Testimony of P. H. Endner.)

Q. Where were you when you took an edger cylinder apart?

A. Never said I took one apart.

Q. How do you know what is in there then? [126—73]

A. From what experience I had in the mill business.

Q. Somebody has told you about what is in there, is that it? A. No, sir.

Q. How did you find out? Do you read about it? A. Just helped put them together, is all.

Q. Never took them apart, but have helped put them together?

A. Have helped put them together, lots of them. About a week ago is the last experience I have had putting a cylinder in.

Q. What kind of edger did you put together then?

A. That was a hand edger. I didn't put any together there.

Q. On those little edgers they do run that lever by hand, don't they? A. Yes.

Q. Now, the same principle applies to the little edger that applies to the big one, doesn't it?

A. No.

Q. What is the difference?

A. They don't have any lever on the rolls of the little edger.

Q. How do they lift the dead rolls of the little edger?

A. They lift the weight and arm, and chains

(Testimony of P. H. Endner.)

come down and fasten down to the roll; when want to raise and lower to put a big cant through there, he pulls down that way and lets go, but that weight holds the pressure of that roll down.

Q. He don't have to put his hand on there and pull down on it there *after lets* go?

A. That is the chief purpose of it. [127—74]

Q. Not the same principle? A. No.

Q. Don't have to pull down on that on the small edger; they won't have to keep the steam on all the time to keep it down.

A. Weight enough in that box to keep it down.

Q. That is not true with the big machine?

A. Yes, just the same, only the down steam, or the steam in that cylinder holds that roll down in place.

Q. That is quite important. Are you quite positive that the steam holds the dead roll down?

A. Yes.

Q. You are just as positive of that as anything you testified to in this case? A. Yes.

Q. That is right, is it?

A. Well, I wouldn't say anything I wasn't sure.

Q. I mean you actually examined the cylinders so that you know of your own knowledge, having seen it, that steam forces these dead rolls down?

A. I don't say that I seen it nor examined it. I said the experience or knowledge of millwrighting and helping to put up mill we hear everything, and the engineer that takes care of them

(Testimony of P. H. Endner.)

usually takes and puts them together, and we help them.

Q. But he tells the theory of that, is that it?

A. Yes, we see it when it is undone.

Q. I understand that you have seen one of these cylinders apart?

A. Not that kind, no. [128—75]

Q. Never saw one of that kind apart?

A. Not that kind.

Q. Then I ask you again how you know how it is constructed if you have never seen it apart?

A. Well, I have seen other cylinders. I didn't say I had seen the Stovel apart.

Q. You have never seen it? A. Not apart, no.

Q. All you know about the construction of the Filer & Stovel cylinder or valve, is what somebody else has told you about it? A. No.

Q. How did you arrive at that answer? The conclusion is logical to me.

A. Any edger is operated as near as can be the same as any other, the steam lifts or the air lifts or the electric lifts; they are practically on the same basis.

Q. Well, you think they are, but if you have never had them apart, how do you know?

A. Well, there is nobody knows, then.

Q. What?

A. The edger-man even himself couldn't tell you that then unless taken them apart.

Q. That is what I say. I am willing to admit that. If he hasn't taken them apart.

(Testimony of P. H. Endner.)

COURT.—I suppose a man working on one machine knows whether the steam holds the rolls down, or whether down by its own weight, knows that by experience and observation?

A. Yes. [129—76]

COURT.—Without taking them apart?

A. That is all. Can't take them cylinders apart in ten minutes; takes a long time, and it is seldom they get stuck.

Q. Where did you ever set up a Filer & Stovel edger? A. I don't know as I ever set up one.

Q. You are superintendent of what mill now?

A. Wiebel Lumber Company.

Q. Where is that located? A. Railhead.

Q. Is that out from Eugene? A. Yes.

Q. How many miles out from Eugene?

A. About one hundred and twenty.

Q. Where is the headquarters of that company?

A. Up at Odell Lake.

Q. How many feet capacity has that?

A. About twenty-five thousand; they are just cutting tunnel timbers there.

Q. Are they running an edger now? A. Yes.

Q. Wuberg? A. Wiebel Company.

Q. Now, their postoffice address would be Eugene? A. Would be Railhead.

Q. There is a postoffice there. Now, Mr. Endner, you said something about there being a nut inside of the edger that the edger-man could take and adjust so that the dead roll would come down within way one inch of clear down, or stay two

(Testimony of P. H. Endner.)

or three inches, according to the type of lumber. Where is that nut? A. Inside the framework.

Q. If the nut were adjusted then on the Filer & Stovel edger, and the steam were turned off, the dead rolls [130—77] would drop clear down of their own weight, would they not?

A. Drop down until they struck this bolt, yes.

Q. Suppose was not any timber coming through at all, the edger is empty of lumber, and this nut were adjusted so that the rolls could drop clear down and touch the live roll beneath, and the steam were turned off, in other words the edgerman had raised his lever, lifted up the dead rolls, and lowered his lever, these dead rolls would drop clear down and strike his live ones, wouldn't they?

A. No, sir.

Q. How far would they drop?

A. Couldn't drop within one inch.

Q. Couldn't the nut be adjusted so would drop within one inch? A. They never do that.

Q. Suppose he did adjust.

A. Suppose he did do it, however, the edger put in motion, what would happen if these two rolls came in contact?

Q. What would happen?

A. It would break it, that is all.

Q. Break it? A. Certainly.

Q. You mean if the two rolls touched, they would break?

A. Certainly. One runs so much faster than

(Testimony of P. H. Endner.)

the other, and one is corrugated, and the other is not.

Q. But it rolls just as fast as any one wants it; it is on ball bearings? A. No.

Q. What kind of bearings? A. Just a box.

Q. Like a railroad car?

A. The shaft runs in a box. [131—78]

Q. The same kind of a hinge as a railroad wheel sits in the railroad car. Is that right?

A. Yes, only smaller.

Q. And you say that the mere fact that those came together, one would break?

A. Naturally. If one part was weak, or the upper wheel was wore a little bit by some sand flaw.

Q. Suppose a brand new mill just opened.

A. Lots of flaws in rolls, even if they are new.

Q. Suppose a brand new roll, no evidence of any flaw in this roll; suppose no flaw in it. You say if they came together, one would break?

A. No, wouldn't naturally break if brand new.

Q. Why wouldn't both turn, the corrugated one make the other one turn?

A. One would drive the other so fast, I wouldn't want to be there.

Q. How fast is that corrugated one turn? How many revolutions per minute?

A. They should run according to the speed of the machine; probably about two hundred feet a minute.

Q. Two hundred feet a minute?

A. One hundred and fifty feet a minute.

(Testimony of P. H. Endner.)

Q. How wide a diameter is the corrugated wheel?

A. In diameter?

Q. Yes. A. About six inches.

Q. Roughly, that would be about three times to get your circumference—would be eighteen inches. If it went two hundred feet a minute, would be one hundred and thirty [132—79] revolutions a minute it would make. You say it goes that fast?

A. I said about one hundred and fifty feet a minute, according to the speed of your engine.

Q. If it went a hundred and fifty feet a minute, then it would make a hundred revolutions a minute, the live roll or the corrugated?

A. I said one hundred and fifty feet a minute.

Q. If a foot and a half in circumference, it would be a hundred revolutions a minute for that roll.

COURT.—You can figure that out.

A. But he just wants to get a fellow balled up. It is reduced to inches—put in six inches, going one inch—that is six to one.

Q. You say the dead roll can't turn that fast without going to pieces?

A. Shouldn't. That is on slow feed.

Q. Should not turn that fast? A. It doesn't.

Q. It doesn't? A. No.

Q. It turns as fast as anything that touches it, won't it?

A. Put your timber in there, and she will roll as fast as the bottom.

Q. But if you just put so touched, it won't roll.

(Testimony of P. H. Endner.)

A. You put iron and iron together, and wood and iron together, it is two different propositions.

Q. Iron and iron won't roll?

A. Well, they break, one or the other has to break. [133—80]

Q. I may be wrong, but I thought just like two cog wheels come together; have seen lots of them turned together and never break.

A. They have pinion mesh. When you put two wheels together, and one corrugated and one not, there is friction, and something has to break, either break the teeth out of the lower roll, or break the other one.

Q. The dead roll is not fixed; it can turn there.

A. Just by the power of the lower roll.

JUROR.—The speed of that saw is regulated, fast or slow, the way they want it; the speed of the saw can be regulated as they want it, fast or slow.

A. If you release your roll, and get your timber into the edger, it is the edger's, and not yours till it comes through the edger. You can't slow it up or speed it?

JUROR.—Isn't it a fact they put different speeds on at different times, and regulate the speed according to the way they want it?

A. They do the timber, yes, but in a big mill like that the edger-man is pretty well filled up all the time, and the faster it comes, the better he likes it.

Q. Now, I will explain this drawing. This is the covering on both sides of the edger; just look at it from the side. Here is shows the live roll on one

(Testimony of P. H. Endner.)

side, the live roll on the other side, and here is the different positions of the dead roll. Here is well down, and that shows them up, and down, and up. This is the cylinder up here. This is the piston rod that presses up with these levers, and causes this to raise up and lower; here is the lever that you [134—81] raise to move this valve; the valve fits on the wide of the cylinder. Here the steam comes in, comes out here, comes over behind, and comes out of that exhaust. Does that look to you like a drawing of the Filer & Stovel edger?

A. No, the Filer & Stovel, as I said before, is right across here. Here is the top of your roll; he takes this and moves it up and down. I never seen that on any machine, unless a new improvement.

Q. You are familiar with all the late improvements, are you not?

A. I am supposed to be. This is something new the last six months.

Q. Direct your attention to this Exhibit "A," indicate where that bar would run across that double edger, and how far across there it would run? Where was this bar on the double edger?

A. There is the double edger. This car here—the back edger would run from here to here into the roll.

Q. Why would they have a bar running clear across there?

A. So the edger-man would not have to stand in one position to run it.

Q. Would the edger-man dare to stand on either side around the edger?

(Testimony of P. H. Endner.)

A. Sometimes they do, but the bar that runs to the middle edger is connected here, and runs over to the other edger.

Q. Now, the principle of the valve would be the same, although there was a bar here instead of single handle? A. The bar runs over here. [135—82]

Q. That should lift up and move the valve just the same? A. Yes.

Q. All right. Now, do you recognize this as the inside of the valve? A. That is inside the valve?

Q. Now, just take the pointer and point out what position; which one of these represents the position of the valve when the steam is coming in, and which one when going out? A. This one is in.

Q. That is where coming in?

A. Comes in this way and goes out that way.

Q. Suppose for your information that this is the steam intake up here. Show where the steam comes in and goes out.

A. In through here, out through here, out that way.

Q. That goes into the cylinder. You see this is the piston of the cylinder here. Just trace the steam as it enters in from where it comes in the cylinder.

A. In here, out here and out here.

Q. Out into the cylinder?

A. Yes, here she comes in around through this out into this part.

Q. That is a solid piece of iron. That red indicates a solid piece of iron? A. It does?

(Testimony of P. H. Endner.)

Q. Yes. A. Solid piece of iron?

Q. What is that?

A. Is this a solid casing?

Q. The center is solid just like that. [136—83]

A. There is no place for this steam to escape only through this.

Q. The steam comes in here and goes around here, goes out into the cylinder here, you say. Well, as long as this piece remains in that position, you see, the steam can't come back up here to escape, because that is a solid piece. When he moves this down, he twists this down; then that shoots the steam going in there; brings this piece around to that piece, and lets the steam go back out the cylinder and exhaust. Just show me on there when he moves the lever down, and the steam coming out in the exhaust, show me where this valve is turned in order to turn the steam on there, so it will press a different direction than it was pressing before?

A. The steam comes in this way. He is raising.

Q. Where it is in this position when coming in?

A. This turns. This works on a swivel when he turns. This forces this in that way.

Q. That lets the steam out? A. Yes, sir.

Q. But you said there was steam that went ahead and forced the dead rolls down. I asked you where that steam is?

A. When this thing is in that position, it can't move, and there is still steam underneath.

Q. How is it underneath there?

A. It holds it there.

(Testimony of P. H. Endner.)

Q. I know, but this is right on the side of the cylinder, and there is an opening all the way out. How could it hold steam in there?

A. You have your ports. You never can close your ports [137—84] only on one side; were left open; if you didn't would have no pressure to turn on again; have to turn by hand till you open that port and let the steam in there and lifted it.

Q. Where is the port?

A. This is the port here. This is the dividing center. If this thing was solid down here, you would have to lower that and raise it by hand until you got off that enter again, so the steam could come in to lift it.

Q. You just move this valve there?

A. By steam.

Q. Here is the handle; this fits the end.

A. The same as worked by hand. You do it by hand.

COURT.—If you are going to use that drawing, get some one that made it and understands it.

Mr. KING.—I am not putting my case about it.

COURT.—But you are asking this man, and he doesn't know about it. He never took one apart.

A. I told you all the time that was the machinist's part of the engineer. A millwright or operator has no business monkeying with any steam fitting.

Q. Let's get that clear. You only know the steam forces these rolls down? A. Yes.

Q. You don't know where it comes from or why?

A. Yes.

(Testimony of P. H. Endner.)

Q. That is right.

A. Yes, your own chart shows an opening in there for the steam while that thing is on this center.

Q. Where's the opening for the steam?

A. Right in here. [138—85]

Q. That is the exhaust.

A. Even so, there is enough steam in there to hold that. If there wasn't, you couldn't raise that again or lower it.

Mr. KING.—He claims to know about this, your Honor. The cylinder is off to this side here.

COURT.—Don't argue with him, then. If he claims to know that is his testimony, and you can argue to the jury, or some other witness.

A. The only thing I am arguing, your Honor, when two ports pass each other—there are two ports to every engine. One port is released, and the other one would go ahead; now, you close one port, and the other is open; just a trifle, to let steam enough in there to force that port there the other side; if you didn't, would have to do it by hand.

Q. You couldn't do it with this lever. All right. You have appeared as an expert in other cases, haven't you? A. One.

Redirect Examination.

(Questions by Mr. MOULTON.)

In those cables of hand or small edgers, where they depend upon the weight of the roll itself to hold it down, is there any added weight put in the roll?

A. Yes.

(Testimony of P. H. Endner.)

Q. What do they do? Explain how those things are made.

A. They have a long lever that comes down and hangs in a truss that this thing wiggles on, and the lever comes out where the edger-man can reach the rops and pull down that. When he raises that roll, he lets go of that, [139—86] and the weight of the lever is behind over the edger.

Q. Do they add any additional weight to the weight of the roll? A. No, sir.

Recross-examination.

(Questions by Mr. KING.)

You have never seen this particular edger upon which Mr. Simpson was injured?

A. I have saw both of them.

Q. What? A. I have saw both of them.

Q. Where did you see them?

A. Down at the mill, Vernonia Company.

Q. What day was that?

A. I don't know. I don't keep no dates.

Q. What month? A. Oh, that was in May.

Q. What? A. May.

Q. This last May?

A. Yes, about six weeks ago.

Whereupon proceedings herein were adjourned until 10 o'clock to-morrow morning. [140—87]

Friday, June 12, 1925, 10 A. M.

P. H. ENDNER resumes the stand.

Recross-examination (Continued).

(Questions by Mr. KING.)

Mr. Endner, I understood yesterday your testimony to be that an edger would not kick back if the valves were in proper condition. Is that right?

A. If the rolls are in proper condition, yes.

Q. Is the rolls are in proper condition?

A. Yes.

Q. If the edger man lifts the rolls up in the air, and keeps them up in the air, while a piece was going through, would that make the piece hit back?

A. No, sir, not naturally.

Q. If the dead rolls were not touching the piece.

A. No, sir.

Q. It wouldn't kick back?

A. Not naturally if the piece is in perfect condition, I mean as long as it didn't touch the back tooth, no chance. The further the stick goes through, the more danger there is.

Q. And if the edger-man lifted up the rolls, and if got through quite a ways, it might kick back.

A. Yes.

Witness excused. [141—88]

TESTIMONY OF JAMES M. RUE, FOR PLAINTIFF.

JAMES M. RUE, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

(Questions by Mr. MOULTON.)

Mr. Rue, what is your occupation?

A. At the present time I am engaged in the timber business.

Q. Have you ever operated sawmills? A. Yes.

Q. How much?

A. Well I was engaged in the operation of mills, and working in mills, since I was seventeen years old.

Q. Have you had anything to do with gang-edgers? A. Yes.

Q. You understand the mechanics and operation of them, do you? A. Yes, sir.

Q. What is the effect on the gang-edger if for any reason the rolls don't come down solidly on the timber that is being driven through?

A. Well, the effect would be, the board might throw back from the edger.

Q. Is it very liable, is the machine rendered liable to throw back boards by reason of the want of force on the rolls? A. Oh, yes. [142—89]

Cross-examination.

(Questions by Mr. KING.)

Mr. Rue, what do I understand by the words "want of force on the rolls"?

(Testimony of James M. Rue.)

A. That would be when the upper rolls didn't fit down tight and square on the board, it would have a tendency—the board would be loose, and the saw would naturally throw the board back.

Q. Am I to understand the upper rolls are held down on the board by steam?

A. Well, that is mechanical work of the machine. If the machine is in perfect mechanical workmanship, it ought to fit down close on the board.

Q. I mean what holds it down on the board? Is it held down by steam pressure?

A. Some by steam pressure, and some by other pressure. Levers, you know, lift them up, or you can let them down on some by steam pressure and different mechanical working in different edgers.

Q. Did you ever work a Filer & Stovel edger?

A. No, I never did personally, but I have been in mills where they had them.

Q. Are you familiar with the valves on the Filer & Stovel edger? A. Yes.

Q. How are the dead rolls lifted up on the Filer & Stovel edger?

A. Some of them are lifted by hand pressure, hand lever.

Q. Excluding those that are lifted by hand pressure how are they lifted up? [143—90]

A. Sometimes they are attached just to the lever, and you catch hold the lever and lift them; other times have a rope attached, so the rope will pull them up; sometimes the valves may get out of gear, might be the rolls wouldn't fit so tight, you see; they have to be adjusted from time to time.

(Testimony of James M. Rue.)

Q. That is the point I want to get. The dead rolls are lifted up by air or steam pressure, are they not? A. Yes.

Q. When you want them to come back down, what do you do?

A. You let go the lever as a rule, or the rope, or whatever is attached to the machinery.

Q. That lets out the steam, does it?

A. Supposed to if the machine working properly, yes. If it isn't working properly, it wouldn't do that. It must be a mechanical operation, or perfect working order, or sometimes it will stick. I have seen them do that; it isn't often it happens that way, but can happen that way. I have seen it that way.

Q. Have you seen them stick?

A. If the machine is in perfect working order, it should work when you let go; when you let go, should drop down.

Q. Suppose in proper working order and you let go and it drops down; is there any force of steam applied on the roll to hold it down on the lumber?

A. Yes, those rolls supposed to be held down quite firmly on the lumber.

Q. What holds it down—the weight?

A. If your rolls are not lying flat, and pressed down the board, the board will not go through the edger. [144—91]

Q. What is the roll held down by, what kind of force? A. That is steam force, as a rule.

Q. Where is that steam applied?

(Testimony of James M. Rue.)

A. Well, I don't know just exactly how that is applied, because I never did operate one personally, as I say. I don't know the mechanical workings exactly, how they would be applied. It is applied by steam.

A. Are you familiar with the nut inside the machine, which adjusts the height to which the roller can come down, the dead roll?

A. I have seen these taken apart and all adjusted at different times, but I don't know that I am just familiar with the exact conditions.

Q. Suppose that nut was adjusted so that the roller was not supposed to come any closer than one inch to the live roll down below, would you then say that the valve was defective because the roller didn't touch the live roll?

A. Well, if the nut was attached so it couldn't come closer than that, of course then that would be—

Q. What is that?

A. If the nuts were adjusted so the roller couldn't come closer than an inch, of course it wouldn't be the fault of the valves, I should say.

Q. Now, there might be other reasons too, why the top roller wouldn't come down, isn't that so?

A. Well, there might be, yes.

Q. You couldn't tell exactly without looking at the particular machine, could you, just exactly why the roller couldn't come down? [145—92]

A. No, you wouldn't. Have to look at it and see whether adjusted properly.

Q. If the roller was down sufficiently to draw a piece of lumber one inch thick in through the saw,

(Testimony of James M. Rue.)

the dead roller, would you say that the valves were working properly? A. Well, it ought to be.

Q. What?

A. It seems that it ought to be working properly if it would be adjusted so it would come to one inch.

Q. If it would draw a one inch piece of lumber into the saw, the dead roller must be down in proper position, is that right?

A. Well, it would appear that it ought to be, yes.

Q. Now, this strain on the live roll and the dead roll that are in the front part of the machine, when the piece is entering—comes when first entering in order to drag the piece of lumber up, doesn't it?

A. Yes, that is the main rolls that push the board on through the edger.

Q. Then when it goes through the saws, the live roll and the dead roll on the other side of the edger take hold of it? A. Yes.

Redirect Examination.

(Questions by Mr. MOULTON.)

Mr. Rue, you have been asked if it would drag a board through: Would it be in proper working order; do these rolls have any other purpose than merely to drag it through? [146—93]

A. Well, the purpose of the roll is to hold the lumber, to keep it from—keep it from shooting back through, and the other is for the purpose of pushing the board through, of course.

(Testimony of James M. Rue.)

Recross-examination.

(Questions by Mr. KING.)

If the piece was thirty feet long, and had gone through the saws for say at least twenty-nine feet of the thirty feet, would you say that the rolls on the edger were down properly, in proper shape?

A. Well, sometimes you know the rolls are not working exactly proper, and yet they will work, but they are not acting as they should act, and you are in a hurry, and can't stop to fix them just at the time.

Q. I am asking you about this specific question: Would you say that the rolls were down sufficiently if it would take a piece of lumber through there for twenty-nine feet of its thirty feet in length?

A. Well, that would be my conclusion that they were working properly, if it would do that, yes.

Witness excused. [147—94]

TESTIMONY OF OSCAR GEORGE, FOR PLAINTIFF.

OSCAR GEORGE, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. MOULTON.)

Q. Where do you live? A. Vernonia.

Q. What are you doing now? A. Oiling.

Q For whom? A. For the Oregon-American.

(Testimony of Oscar George.)

Q. You were working for that mill as oiler when Clyde Simpson was hurt, were you? A. No, sir.

Q. What were you doing there then?

A. Working as extra.

Q. What was the nature of your duties?

A. Well, all over the mill.

Q. Were you there when Simpson was hurt.

A. Yes.

Q. How did you come to be there?

A. Well, I was working was the reason I was in the mill.

Q. How did you happen to be right where Simpson was, or where were you?

A. Well, it was just about quitting time, and in the afternoon after the mill blowed off, I always helped the millwright.

Q. What did you see happen at the time Simpson was hurt? [148—95] Just start at the first when you came up, and tell the jury what happened.

A. Well, the only thing that I saw was that he lined the board and turned around, and walked back around the roll, and turned around, and the board hit him.

Q. Where did he stand to line the board?

A. Well, he stand on the right-hand side of the edger.

Q. Now, there is a set of rolls there, is there, a set of rolls that take the board from where he lines it up, is there? A. Yes.

Q. Here is this picture, this Defendant's Exhibit

(Testimony of Oscar George.)

"A." Can you point out on that where Simpson stood to line that board?

A. Well, he would stand right on this right side of the board, facing the edger.

Q. That would put him where? Between the conveyor and the rolls?

A. Between the rolls over her. The roller bands of band mill and the roll of the edger.

Q. That is where the conveyor-rolls bring the lumber down there? A. Yes.

Q. He stood between those and the edger-rolls?

A. Yes.

Q. Where did he go after lining that board up?

A. He walked right around on back of the roll and stopped back there, stopped right along here.

Q. Where did he stop with reference to these pedals? A. That time? [149—96]

Q. With reference to the pedal?

A. He stopped about in here some place.

Q. There has been a little "S" marked in there. I don't know whether you can see it or not. How does that compare with the place he stopped?

A. That is about where he did, right along in there. Maybe a little to the right.

Q. Did you notice how far the board had got at the time he came back?

A. Well, I noticed after it had got back, how far it had got.

Q. Were you at any time observing the board as it went down into the edger? A. No, sir.

Q. With what force did the board go?

(Testimony of Oscar George.)

A. Well, I wouldn't say what force.

Q. How fast? Did it go slowly along the roll, or how did it go?

A. Well, it came fast.

Q. I wish you would come just as near as you could to giving the jury an idea of the rapidity with which it came out of the edger.

A. I don't know how to explain it.

Q. How is that?

A. I say I wouldn't know how to explain it. The board was coming fast enough that it wasn't touching the roll when coming back.

Q. Wasn't touching the rolls at all? A. No.

Q. How high from the rolls was it? [150—97]

A. I would judge about between a foot and eighteen inches.

Q. Was there any call or cry given as it came back? A. No, sir, not that I heard.

Q. What did Simpson do?

A. Well, when it hit him, then he turned and wheeled around, or went down to his knees, and got up and fell again, fell to his hands and knees that time, and tried to get up again. Then he fell to his face on the floor.

Q. What did you do?

A. I jumped over the rolls, and when he started to turn over on his face, I caught his head in my hands.

Q. Did you notice the boards that lay there?

A. Yes.

Q. Where did the board lay?

(Testimony of Oscar George.)

A. Well, it was lying just about in right where it hit him, just about the same place where it hit him.

Q. Did you notice the end of the board, the end that hit him, as to whether it had been sawed clear through or not? A. Yes.

Q. Was it sawed clear through? A. No, sir.

Q. How much did it lack?

A. Well, I should say about six inches.

Q. How had that board been separated?

A. It looked as though split off.

Q. And did you then as you sat there holding him, did you turn and look back at the rolls at all?

A. Yes.

Q. What condition were they in, as you looked back? A. The rolls were up?

Q. How far up.

A. I guess about six inches. [151—98]

Cross-examination.

(Questions by Mr. KING.)

I don't quite understand where the piece of lumber was when it stopped after it hit him. Would you indicate on that picture?

A. Was laying on the rolls just about in line—in the same place where it hit him.

Q. Be on the roll and about the same place as that cant there? A. Laying over this way.

Q. Be diagonal?

A. No, straight; about straight; that way it hit him only over this way.

Q. I say more over on the roll there; is that right?

(Testimony of Oscar George.)

A. No, not so far over; about in line with where it came out the edger; where it was in the edger.

Q. Just heading right straight towards the edger along the rolls? A. Yes.

Q. How high is this last roll off the floor?

A. I don't know how high it is, not exactly; it is the same height as the others; they are all in line, level.

Q. Three feet off the floor?

A. I don't know. I never noticed them very close, you know, just how they are off the floor.

Q. Do you know about how high up they would come on you? To your hip would it be, or how far?

A. Well, they come, I would say about along there.

Q. Just about midway between—

A. Yes. [152—99]

Q. About here? A. Yes.

Q. How thick was the piece of lumber?

A. One inch.

Q. One inch in the rough?

A. Yes, sir; well, I don't know; an inch and a quarter in the rough, I suppose, is what they make.

Q. You went around and examined what was split off this piece, didn't you?

A. No, sir, I didn't examine it. It was laying close to my head as I was holding his head in my hand, and I shoved it over back is how I came to notice it.

Q. That is the only attention you paid to this piece? A. That is all.

(Testimony of Oscar George.)

Q. That part of the piece that was split off would be thirty feet from you, wouldn't it?

A. Would be thirty feet from me?

Q. Yes, thirty feet long, wasn't it?

A. I don't know.

Q. Where was Simpson lying when you took hold of his head?

A. He was lying between these pedals and this roll.

Q. Now, a piece was split off the end piece of this cut, wasn't it? A. Yes.

Q. Where was the place where you saw an indication that something had split off that piece? Had not been sawed clear through.

A. This end was laying over this roll, and when we turned around, it was nearest to my head, and I shoved it in.

Q. And it was split on which side? [153—100]

A. Split on both sides.

Q. Split on both sides?

A. Split off on both sides.

Q. There was a piece evidently split off from the right side of the piece as it laid on the roll, and the left side? A. Yes.

Q. About six inches from the end? A. Yes.

Q. Your duties required you to be all over the mill. Is that right? A. Yes, sir.

Q. Simpson was promptly removed from the mill, was he not? A. Yes, sir.

Q. And medical attention was summoned right away?

(Testimony of Oscar George.)

A. Well, I guess they were. I didn't go to the doctor's office with him.

Q. They didn't lose any time taking him to the doctor's office, did they? A. No, sir.

Q. Did you look towards the rolls on this edger after this accident and when you were there with Mr. Simpson? A. Yes, sir.

Q. I didn't get it clear. You have there an awful lot of rolls, of course you know, connected with this edger; rolls leading up to where the lumber comes in; dead rolls up above and around the edger; which rolls were you speaking about?

A. Well, I spoke of all of them as far as that is concerned.

Q. When you say the rolls were up six inches, which ones do you mean?

A. I meant the dead rolls on the edger.

Q. Were up in the air six inches? A. Yes, sir.

Q. Did you go around the edger? A. No, sir.

Q. Where was Pete Matesco?

A. The edger-man?

Q. Yes. A. Well, he was at the edger, in front. [154—101]

Q. On the side where you and Simpson were?

A. Yes, sir.

Q. Did he have his hand on the lever?

A. Well, I never noticed whether he did or not.

Q. Was he standing right by the lever?

A. Well, he was standing by the side of the edger where the lever is.

(Testimony of Oscar George.)

Q. You didn't notice whether his hand was on the lever? A. No, sir.

Q. Would you say that his hand wasn't on the lever, so as to lift the dead rolls up, at that time?

A. I wouldn't say they wasn't or I wouldn't say they was, because I didn't notice it.

Q. You didn't notice that? A. No, sir.

Mr. MOULTON.—Are you going to stand upon the denial in the answer that Mr. Simpson died as a result of this blow? If you do I will go into the nature of his wound.

Mr. KING.—No, I think not. I think we admit that.

Mr. MOULTON.—If you admit that he died as a result of this blow we will not go into that.

Mr. KING.—We will admit in this way: As I said to the jury in the opening statement that in spite of medical attention, infection set in and he died as a result of that.

Mr. MOULTON.—I want to find out if you make a point the man did not die as a result of this blow. That is the limit of my proof. I will go in and bring out the nature of the wound and the nature of the man's subsequent sickness.

Mr. KING.—I don't intend to urge it. I just want [155—102] to place before the jury that infection set in after several weeks' treatment.

COURT.—You admit that Simpson died as a result of this injury?

Mr. KING.—Yes, your Honor, through the intermediate means of infection.

(Testimony of Claude Gibson.)

COURT.—Died as a result of this injury then?

Mr. MOULTON.—That is what I want to get at. I don't want to try the question of the nature of the injury and the subsequent treatment and sickness unless necessary.

Witness excused. [156—103]

TESTIMONY OF CLAUDE GIBSON, FOR PLAINTIFF.

CLAUDE GIBSON, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. MOULTON.)

Where do you live Mr. Gibson?

A. Vernonia, Oregon.

Q. What is your occupation?

A. I was spotting the long edger.

Q. What are you doing now?

A. Working nights.

Q. In the same manner? A. Yes.

Q. How long had you worked in that mill when Clyde Simpson was hurt?

A. Well, I don't know how long it was. I started to work there when the mill first started.

Q. You knew Simpson, did you? A. Yes, sir.

Q. Where did you work during the time the mill had been in operation up to the time he was hurt?

A. I worked there with him for a while, and then I was on gang saw about three weeks, and then went

(Testimony of Claude Gibson.)

on the short side of the edger; was the short side of the edger when he got hurt.

Q. Had you been working before he was hurt in the same place he was working?

A. I was running jumpsaw, right where he worked; he was spotting.

Q. Did you have an opportunity to observe the manner in which this edger he was working on, and the one that is in controversy here, had been working?

A. Well, it was working all right when I saw it there. [157—104]

Q. What about during the time up to the time when he was hurt, what observation did you have in regard to whether the rolls on that edger laid down —came down in response to the lever, promptly?

A. Well, there was sometimes that they would stick.

COURT.—Sometimes what?

A. Sometimes they would stick and wouldn't come down.

Q. How often would they stick?

A. I only seen that stick a few times, not more than half a dozen times, I guess.

Q. What happened? You say half a dozen times?

A. Yes.

Q. What happened when they stuck?

A. Wasn't anything happened; they stuck, and stuck for a minute, then they would come down.

Q. Did you have an opportunity to observe how solidly they came down on these pieces—thin pieces?

(Testimony of Claude Gibson.)

A. No, sir.

Q. From your position all you observed was what you have already testified? A. Yes, sir.

Q. Where were you when Simpson was hurt?

A. On the short side of the edger.

Q. How far away was that?

A. I was on the other side of the mill, just opposite; I don't know how far that is.

COURT.—About how far?

A. About a hundred feet I imagine.

Q. Did you see the accident yourself?

A. No, sir.

Q. You didn't know it happened until you saw him [158—105] being carried out?

A. That is the first I noticed, when they carried him out.

Cross-examination.

(Questions by Mr. KING.)

You say the edger worked pretty well while you were there? A. Yes, sir.

Q. While you were there, when the rolls would stick, that didn't have any connection with the lumber kicking back, did it?

A. I never did see a board kick back on that account while I was there.

Q. What happened while you were there? For what reason did any lumber kick back?

A. I believe was only one timber kicked back while I was on there; that was a four by twenty-four lapped on top of another the same width and thickness; was lapped about half way; the first went

(Testimony of Claude Gibson.)

through and the second one hung; it couldn't come down on the rolls to get pressure enough to run through and it kicked back.

Q. I hand you Defendant's Exhibit "A." Do you recognize that as a picture of the gang-edger?

A. Yes, sir.

Q. Now would you indicate the position on that picture where the spotter would stand when spotting thirty-foot pieces of lumber.

A. Should be standing in here, out away from the board unless he has another on his transfer chain.

Q. Just hold that up and show the jury where he would be standing.

A. Standing in here unless he had another board in there. [159—106]

Q. Now after the piece was spotted and headed straight through the edger, what would the spotter do then? Where should he stand then?

A. Thirty-foot board?

Q. Yes.

A. Well, he could either stand over here or back here until he got it through.

Q. He wouldn't have any further duties to perform until the board was through, would he?

A. No, sir, not after the board starts through the edger.

Q. And do you say, Mr. Gibson, he should stand to one side or the other side while the board is going through the edger?

A. Well, unless he wants to get hit; he is taking a chance if he stands behind it.

(Testimony of Claude Gibson.)

Q. Is that any special knowledge that you have about the edger, or is that known among mill employees?

A. Well, I don't know. I have always made it a practice to stand away from the board after it starts in.

Q. Anybody tell you anything about that when you started to work there?

A. Yes, Pete told me when I first started to work there.

Q. Who is Pete? A. The edger-man.

Redirect Examination.

(Questions by Mr. MOULTON.)

What would the next duties of the liner-up be after the board went through?

A. To trip the next one by.

Q. Where would he go to trip that?

A. Go to his trip lever, next roll case on a thirty-foot board.

Q. Where are those trip levers? Point to trip levers? [160—107]

A. Trip levers right here; throw out trip levers back here.

Q. Are there any trip levers in there at all?

A. Yes, sir.

Q. What are these trip levers here for? There are three there.

A. That is the bumper lever here to raise and lower the bumper; these are trip levers that come in and start the transfer chains.

(Testimony of Claude Gibson.)

Q. What is the purpose of operating this bumper lever?

A. To let your timbers and slabs you don't want to go through your edger on down.

Q. Suppose you spot a board here and slabs were coming which you did want to send over the edger, where would you next go?

A. Push my bumper lever down and let the free slab go.

Q. Where would you go to do that?

A. On a thirty-foot board probably it would be about here.

Q. Would you be able to operate the bumper lever from there? A. Yes, sir.

Q. What lever would operate up there?

A. The first lever there; three levers there.

Q. Is there two levers on that bumper?

A. Yes, sir.

Q. What does this lever here operate?

A. The bumper.

Q. What does that connect with?

A. Connects with this pedal over here; then they run from there up to the bumper.

Mr. KING.—In other words, Mr. Gibson, they have a double set of levers there? A. Yes, sir.

Witness excused. [161—108]

TESTIMONY OF CHARLES FISHER, FOR PLAINTIFF.

CHARLES FISHER, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. MOULTON.)

Mr. Fisher, where do you live?

A. 748 Thirty-first Street, South.

Q. What is your occupation? A. Engineer.

Q. What else have you done besides engineer around a sawmill?

A. Well, I have sawmilled quite a bit—millwright.

Q. Where have you worked as a millwright?

A. I worked for the St. Johns Lumber Company; worked up at Bend.

Q. What mill in Bend? A. J. Croner.

Q. Yes.

A. Pine Tree Lumber Company; had charge of that for a year and a half.

Q. What other mills have you worked in?

A. Have worked in a mill up at Springfield and also above Springfield, another town; worked at the East Side Lumber Company over here.

Q. What experience have you had with steam?

A. I have had quite a bit of experience with steam.

Q. How many years? A. Nearly all my life.

Q. Are you familiar with the devices ordinarily used to lift the rolls of gang-edgers, the rolls—top rolls?

(Testimony of Charles Fisher.)

A. Most of them, yes, except the very latest patterns that come out; they are all worked by steam.

Q. Will you explain to the jury what the purpose of these [162—109] rolls connected with the gang-edger is.

A. Well, they were put there for holding the lumber down so the live roll will drag it through the saw without kicking back.

Q. What is the effect of these rolls sticking in any way so they don't come down solidly on the board? A. Well, liable to kick back in there.

Q. Just explain to the jury how it happens the lumber kicks back when the rolls are loose.

A. Well, when they start through, start a cant through and your rolls isn't down on your lumber to hold down and happens to get the least bit twisted the teeth catches in back and will kick her back, that is towards the liner-man.

Cross-examination.

(Questions by Mr. KING.)

Have you yourself operated an edger?

A. No, I never operated one, but I have had charge of them in the repairing of them.

Q. You have watched them work too, have you?

A. Yes, sir.

Q. Now, I will ask you this question: In the time you have been around edgers, and watched them work, did you ever see one kick back when the rolls were down?

A. Not when the rolls were down, I never did.

Q. Never did? A. No, sir.

(Testimony of Charles Fisher.)

Q. Well, now are you familiar with the little bolt underneath there that adjusts the distance the rolls come down?

A. They have what they call a bumping block on each side of the rolls for adjustment.

Q. That adjusts the distance the rolls come down? [163—110]

A. Yes, adjust the rolls so they will come down just to keep from hitting each other, one from another.

Q. The edger-man by turning a little adjustment in there can either keep them from coming down within two inches or four inches, or whatever he wants to set them. Is that right? A. Yes, sir.

Q. What force holds the dead roll down on the live roll?

A. Well, some of them held by steam, and some of holds themselves down, and others are held down by steam; they are not all made alike.

Q. Are you familiar with the Filer & Stovel edger? A. Well, I have saw them, yes.

Q. In the Filer & Stovel edger what holds the dead rolls down?

A. Well, some of them held by steam, and some of them are not. I don't know which pattern they have there, I couldn't say which make, I don't know.

Q. Now, when they want to raise the dead rolls they lift a lever which raises them up by steam pressure, is that right?

(Testimony of Charles Fisher.)

A. Yes, after lever is down, that lets the steam in from the lower port and forces up. Now, when they do raise that up and lets the steam in from the other port and shoves down on the timber.

Q. There are two different operations?

A. Yes.

Q. Where is the port through which the steam exhausts when they want to let it out of the cylinder?

A. Comes out through the same port it goes in when you cut down the other way; it is in your lever; the lever cuts your ports.

Q. Mr. Fisher, are you quite positive there is steam pressure [164—111] on these rolls when down on the lumber?

A. On some of them, I say they are. I am not familiar with this one, I don't know anything about it.

Q. You don't know anything about this particular kind of an edger then?

A. On some they force up and they force down.

Q. Lets confine our attention to the Filer & Stovel edger, which is the one in question. Would you say there was steam pressure on that edger that holds the dead roll down on the lumber?

A. Well, I say I don't know what make or what late pattern that is, but their old pattern I know some of them have steam pressure both ways.

Q. The old pattern. How many years ago was that you were familiar with the old pattern Filer & Stovel?

(Testimony of Charles Fisher.)

A. I think the last time I worked one of them was in 1907.

Q. Where was that? A. That was up in Bend.

Q. The Pine Tree Lumber Company in 1907?

A. Yes.

Q. Have you ever operated or seen a Filer & Stovel edger since that time?

A. I haven't been inside of a mill since that.

Q. Haven't been inside of a mill. Never have seen the Filer & Stovel edger since then?

A. Not the late pattern, no.

Q. Of course it is rather ridiculous to ask you this question. Of course you would not be familiar with the construction of the Filer & Stovel edgers now put out and regularly installed, would you?

A. No. [165—112]

Q. Nor its method of operation? A. No, sir.

Witness excused. [166—113]

TESTIMONY OF JOHN P. H. REICKA, FOR PLAINTIFF.

JOHN P. H. REICKA, a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. MOULTON.)

What is your occupation?

A. My occupation is edger-man.

Q. Where do you work? A. Muckle mills.

Q. Where? A. Muckle Lumber Company.

(Testimony of John P. H. Reicka.)

Q. How long have you operated a gang-edger?

A. About eighteen years.

Q. Are you familiar with the various types and kinds of gang-edgers in use along this coast?

A. Familiar with the Allis-Chalmers and Sumner and old type Diamond edger.

Q. On any gang-edger where several saws are used on one drum, what is the effect on the operation of the edger if the rolls don't come down solidly on the lumber?

Mr. KING.—I make the objection this man is not qualified with respect to the Filer & Stovel edger.

COURT.—He didn't ask about that. He asked on any edger. I don't suppose the particular type of edger would make any difference with the effect if the rolls shouldn't come down.

Mr. KING.—No evidence to show—

COURT.—I suppose the rolls operate the same. Counsel asked what the effect would be if the top roll didn't come down on the lumber that was passing through there. [167—114]

A. Well that would immediately place the man behind the works in danger.

Q. Why? That is your conclusion more than anything else.

Mr. KING.—I move to strike that out.

COURT.—Very well.

Q. Explain what you mean.

A. Well, in the first place the lumber if straight green lumber might carry through, and if was any

(Testimony of John P. H. Reicka.)

interference in the back of any machine through slivers catching between the roll and guide it would have a chance there to kick out of the machine.

Q. What is it makes the stick fly?

A. Causes them to cramp right away.

Q. Gives them the cramps. What holds from cramping?

A. In the first place a sliver will slip in between guide and saw; runs hot immediately. A board wouldn't pass that sliver, it would split; if a roll was down on there it would split to a certain extent and it would stick there, and it would crowd the saw sidewise until it would come in such heat that it would not travel any more. Then if there was any projection the roll wouldn't come down on the lumber, it would kick it through the mill. It all depends on how far the stick was through the saw.

Cross-examination.

(Questions by Mr. KING.)

Depends on how far the stick was over?

A. How far the stick was in the machine.

Q. Suppose the edger-man held up—lifted up the dead roll when the stick was stuck. Would that have the same effect? [168—115]

A. That would immediately throw the stick out.

Q. Yes, it would throw it out.

A. But most of machines have a reverse; they are not supposed to raise the rolls and let it fly, supposed to roll on.

Q. How many years did you work on edgers?

(Testimony of John P. H. Reicka.)

A. About eighteen years.

Q. Do you know any that you worked on that didn't kick back at some time?

A. I tell you they all kick back if you give them a chance.

Q. And now is there any particular position for the spotter to stand in when the lumber is going through the edger?

A. The spotter has just as much—has a lot of work to do himself; he has to sometimes hold over a stick; it depends on conditions, how the stick travels through the machine. If a heavy stick of timber sometimes has to hold it over until the stick gets a certain distance through the machine to make it travel through. Sometimes probably send timber five—twelve by twelve—ten by ten—rolls don't always lead straight to the edger, and it causes them to run away, your helper will help hold the stick over and hold it against the straight edge so it will help to travel straight; to keep from splitting the timber. That causes him to stand in a certain place sometimes. He has to work the same as anyone else. That is what he is there for.

Q. Is it dangerous, as a matter of fact, Mr. Reicka, for the line-up man to stand behind, directly behind the rolls when a piece of lumber is going through?

A. Is there danger— [169—116]

Q. Is it dangerous? A. Yes, there is danger.

(Testimony of John P. H. Reicka.)

Redirect Examination.

(Questions by Mr. MOULTON.)

What about his work there? You have been asked about it. Is there anything to call him there that he does have to stand behind? Dangerous or no dangerous, is there any work he has to do that?

A. Calls him back in line with the board?

Q. Yes.

A. Sometimes he is in a position he can't get out of there and causes him to stand there all the time.

Recross-examination.

(Questions by Mr. KING.)

Now when you make the last answer, Mr. Reicka, you have never seen the Oregon-American Lumber Company mill at Vernonia, have you?

A. Never have.

Q. And you don't know how much space there is on either side the end roll, do you?

A. No, I don't.

Q. You are not familiar where the levers are to operate there?

A. No, I don't, I don't know a thing.

JUROR.—The facts in the case are that for bigger square timbers they use a different resaw from those that resaw the inch lumber. Isn't that a fact? They don't use that big saw that take big timber for thin boards around there, do they?

A. You mean cut from one inch?

(Testimony of John P. H. Reicka.)

JUROR.—On the same machine.

A. On the same machine.

Witness excused. [170—117]

TESTIMONY OF MRS. MABEL SIMPSON, FOR PLAINTIFF.

Mrs. MABEL SIMPSON, a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

Mr. KING.—At this time I desire to admit that Mrs. Simpson is the wife of Mr. Simpson, and that the children are proper parties plaintiff.

(Questions by Mr. MOULTON.)

Mrs. Simpson, you knew Clyde Simpson, your husband, for how many years?

A. About eight years.

Q. And how long were you married to him?

A. Six years.

Q. How old was he? A. He was twenty-six.

Q. Twenty-six? A. Yes.

Q. What was the state and condition of his health up to the time he was hurt last September?

A. He was a healthy working fellow, he never missed a day in sickness.

Q. What was his physical ability to perform work? Was he able to perform his work?

A. Yes, sir.

Q. And what were his habits of thrift and industry? A. He was industrious.

(Testimony of Mrs. Mabel Simpson.)

Q. What were his habits in respect to contributing to the support of yourself and these children?

A. I don't know what you mean?

Q. Did he contribute to your support and the support of the children? A. Yes. [171—118]

Q. How much did he contribute?

A. Well, everything he made.

Q. How much was he making at the time he was hurt? A. He was drawing $5.00 a day.

Q. How steadily had he been employed there before that?

A. Well, he had worked every day that he went to work up there.

Q. Where did he live before he came to Oregon.

A. We lived in Arizona a while.

Q. I can't hear. A. At Cooley, Arizona.

Q. What kind of work did he do before this work?

A. I don't know I am sure. He worked in a mill at Cooley, Arizona, but I don't know what he did.

Q. He worked in a sawmill? A. Yes.

Q. What did he earn there, do you know?

A. I don't remember.

Q. Was he intelligent or otherwise?

A. Yes, he was intelligent.

Q. To what extent was he educated, did he have a good education, or how much education?

A. Yes, he had a good education.

Mr. KING.—I might ask one question. Had he completed high school?

A. Well, I don't know.

(Testimony of Pete Matesco.)

Witness excused.

Plaintiff rests.

Mr. KING.—Would your Honor entertain a motion for a nonsuit at the present time?

COURT.—No, I want the evidence first. [172—119]

TESTIMONY OF PETE MATESCO, FOR DEFENDANT.

PETE MATESCO, a witness called in behalf of the defendant, being first duly sworn testified as follows:

Direct Examination.

(Questions by Mr. KING.)

Where do you live, Mr. Matesco, at the present time.

A. Do you mean where I live now?

Q. Yes. A. Vernonia.

Q. You live at Vernonia. How long have you lived there?

A. Oh, I live about two years.

Q. And what have you been doing while you were in Vernonia, what work?

A. Oh, I build couple of houses for myself.

Q. Then what did you do after that?

A. I got a job in Oregon-American Lumber Company.

Q. Did you go to work there when the mill started? A. Yes.

Q. What job did you have there?

(Testimony of Pete Matesco.)

A. Edger-man.

Q. And you were edger-man right from the time the mill started, is that right? A. Yes.

Q. Are still edger-man there? A. Yes.

Q. Which edger do you run?

A. I run long side edger.

Q. The big edger? A. The big one.

Q. Did you ever run an edger before you came there? A. Yes, sir. [173—120]

Q. Where was that?

A. I run edger down on Grays Harbor, Aberdeen.

Q. Aberdeen, Washington?

A. Yes. Then I run edger for Silver Falls Lumber Company. Then I run edger down in South Bend, Washington.

Q. South Bend, Washington? A. Yes.

Q. How many years altogether have you been running an edger?

A. Oh, I run edger from 1915.

Q. 1915. Since 1915. You knew Clyde Simpson? A. Yes, I knew him.

Q. You remember when he came to work for you on that edger? A. Yes, sir.

Q. What job did he have on that edger?

A. He spot lumber for me.

Q. Did you explain to him how to do the work when he came there? A. Yes, sir.

Q. Now this edger. It has some dead rolls up above, hasn't it? A. Yes, sir.

Q. That come down on both sides. At the time of this accident how were those dead rolls working?

A. Oh, working pretty good.

(Testimony of Pete Matesco.)

Q. Working pretty good.

A. Yes. Sometimes stick, but when they stick I call mill foreman, and mill foreman call pipe steam-man to fix him up.

Q. Whenever they stick did you call the mill foreman and the pipe steam-man?

A. Not right away, you see, because he can't do it right away; maybe after hour at noontime, or after five, ten [174—121] minutes, twenty—I don't know myself you see, but can't fix it when I report. If be working a little bit he come and fix it.

Q. Do you remember when Mr. Simpson was hurt? A. Yes.

Q. What time of day was that?

A. That was fifteen minutes to five, to quitting time.

Q. Near quitting time? A. Yes.

Q. Now you remember how the dead rolls were working that day? A. Were working fine.

Q. Did the dead rolls come down on the lumber?

A. Yes, that day working fine, good.

Q. Working fine? A. Yes.

Q. Did you see Mr. Simpson get hit? A. Yes.

Q. Where were you standing at that time?

A. I stand right at the machine, across the machine.

Q. How tall is that edger? How tall is the table of it? A. From the bottom of the table?

Q. From the floor up, how far?

A. Must be four foot and a half, five foot.

Q. Five feet tall?

(Testimony of Pete Matesco.)

A. I think is over five feet, because I am six foot one and a half; times when I can't see across the edger much.

Q. Can't see across it?

A. Much. Just little bit.

Q. Do you remember what kind of a piece of lumber was coming through the edger when Mr. Simpson was hurt? A. Yes.

Q. Just tell the jury about what size it was.

A. It was fourteen inches—sawed timber fourteen by fourteen— [175—122] that is I had fourteen inches wide; I make two sizes, use two saws.

Q. How many saws were you using on it?

A. Two.

Q. When the piece came down on the conveyor from the head rig—isn't that where the lumber comes from? A. Yes.

Q. Let me show you a picture so we can get this. I show you Defendant's Exhibit "A." Take a look at that picture. Is that the edger you were working on? A. That is the edger.

Q. Where does the lumber come down there to come to the edger? A. From this roll here.

Q. When that piece came down that Simpson spotted as it was coming through at the time he was hurt, what size was it? What was its dimensions when it came down the conveyor to the saw?

A. Was fourteen inches wide.

Q. How thick? A. One inch.

Q. And how many feet long?

(Testimony of Pete Matesco.)

A. From twenty-eight to thirty-two, I don't know exactly.

Q. Now, Mr. Simpson spotted it on the rolls in front of the edger, did he? A. Yes, sir.

Q. Who set the saws? A. I set them myself.

Q. You set the saw to cut what dimension?

A. Yes.

Q. What size were you cutting out?

A. I cut from one inch to ten inches, and ten inches [176—123] thick and seven feet wide.

Q. This particular piece you were going to cut, this fourteen-inch piece, up into one by six, did you say?

A. Yes. I make two six from fourteen inches.

Q. Would it leave an extra strip of two inches?

A. No, because saw take three-eighths; each saw take three-eighth cut; that was what he cut. That pretty near no left nothing.

Q. I didn't know that. Takes three-eighths?

A. Takes three-eighths.

Q. That left nothing? A. No.

Q. That would leave a little bit.

A. Little bit, sometimes no, you see, because sometimes cut a little narrower, sometimes cut a little wide.

Q. A sawyer don't always get it accurate?

A. That is all.

Q. Just tell the jury about how far that piece was through your edger when it went back.

A. Oh, that piece it was through about twenty

(Testimony of Pete Matesco.)

foot, twenty-two through, was through the machine.

Q. About twenty-two feet had gone through?

A. Yes.

Q. Were the dead rolls down on it? A. Yes.

Q. Now, Pete, is there any steam pressure that is supposed to hold the dead rolls down?

A. Oh, yes.

Q. On the lumber? A. Steam pressure.

Q. Steam pressure holds it down on the lumber?

A. Yes.

Q. Pete, you just explain now, after the lumber is on the rolls—you just explain what you do in order to get it [177—124] to come through the edger.

A. I got to spot myself. I got to spot myself. Then I had a jump-roll to start. Lumber come across the machine, then it catch in feed-roll and top roll. I got to do nothing.

Q. Just watch it?

A. Watch the board go through. But if any hot saw inside the machine, then any machine is going to kick back, no matter if Allis-Chalmers, or Filer & Stovel, or Diamond, no matter what machine it is.

Q. What causes the saw to get hot?

A. Because we got some plugs and use pin inside, and then some stick get in between the pin and saw, and saw run faster and make so hot as lumber can't go through, have to kick back.

Q. Did you look at the saw after Mr. Simpson was hurt? A. Yes, sir.

(Testimony of Pete Matesco.)

Q. How was it?

A. It was hot. It was hot, pretty near smoking, it wasn't smoking, but pretty near smoking. I took a hose, I took a coil of hose and make it cool; we have a coil of hose.

Q. Just explain to the jury when you want to raise up the roll just how you do it. What do you take hold of?

A. I got a little handle, and when I want to raise up I raise; when I want to come down I come down, and the roll drops down.

Q. When the roll drops down and there wasn't any lumber there, I mean the rolls in front of the edger are empty, suppose no lumber there, and you drop hands down?

A. I got hands down, I got nothing to do any more. [178—125]

Q. Now, suppose you drop the handle down and let the dead roll down and no lumber in the edger, no lumber coming through, will the dead roll touch the live roll?

A. Sometimes touch, but it didn't touch.

Q. Sometimes touch? A. No.

Q. How close does it come?

A. Oh, about three-quarters of an inch.

Q. Three-quarters of an inch?

A. Just stay that way all the time.

Q. Can you adjust that distance, can you adjust that? A. No, I can't do that.

Q. Somebody else in the mill does that?

A. Yes, the steam-fitter.

(Testimony of Pete Matesco.)

Q. The steam-fitter does that? A. Yes, sir.

(Questions by Mr. ILLIDGE.)

May I ask one or two questions. I am familiar. Mr. Matesco, I call your attention to this diagram here. Can you tell what that is? A. Yes.

Q. What is that, explain it?

A. That is a roll. That is a roll here; that is saw in arbor; that is lever to raise up steam and come down rolls.

Q. That lever there? A. Yes.

Q. Is that the handle where you take hold?

A. That is the handle there. That is cylinder where raise these rolls.

Q. That is the cylinder? A. Yes, sir.

Q. If I understand you—is that the live roll?

A. Yes—no—yes, that is the live roll. That is the top [179—126] roll, what we call the feed-roll.

Q. Does that have power?

A. That is run by motor.

Q. That is turning all the time?

A. Yes, that is turning all the time.

Q. Is that a live roll?

A. That is a live roll; have two.

Q. That has power, too? A. Yes.

Q. And turning all the time. This roll, tell us about that roll. A. It is a top roll.

Q. Is that known as a pressure roll?

A. Pressure roll.

Q. And that is a dead roll? A. Dead roll.

Q. It does not turn? A. No.

(Testimony of Pete Matesco.)

Q. Except has something—

A. When the lumber come through on the feeder-roll then it roll just the same like the bottom roll.

Q. That roll, what material is that roll made of?

A. Steel.

Q. Is it a hollow cylinder or is it a solid cylinder, or what? A. Solid cylinder?

Q. This roll, is that solid steel?

A. Solid steel.

Q. What is the size of that roll, how long is that roll?

A. Oh, about—I think it is four feet, because I know in seven feet three rolls; seven feet machine and three rolls were there, three cylinders.

Q. Your edger is seven feet wide?

A. Edger is seven feet wide.

Q. You have three rolls?

A. Three rolls. [180—127]

Q. This roll?

A. Four feet long and the rest of it is about one and a half foot or more. I don't know exact, I didn't measure.

Q. This edger, is that what is known as a double edger? A. Double edger.

Q. Now, referring to this diagram, showing the rolls that lead to the edger?

A. This roll case, he come from the head rig.

Q. The head rig is the same as the carriage?

A. That is the roll case there. He come to big bumper here, that bumper come up and go down. When want to transfer lumber to edger, lumber

(Testimony of Pete Matesco.)

comes into these skids. These skids is for lumber here; handle myself, and skids too.

Q. Those skids, are they endless chains?

A. These skids bring lumber right there in line with the machine.

Q. Are they merely a piece of steel that is greased so something will slide on it, or chains?

A. Chain and steel; chains stay on top, and steel.

Q. The chain slides over the top of the steel?

A. Yes, and come down and up, because work in cylinder down there.

Q. And one system of chains—the skids take the lumber off the roll case as it comes from the carriage? A. Yes.

Q. And brings it over against—

A. Brings it to here.

Q. What are these called?

A. These are that come—I don't know myself what they are, [181—128] that is worked by steam. When the skids raise up it comes down.

Q. Did you operate this yourself?

A. Yes. That has been connected with some cylinder working this one and these skids; when the skids come up they come down; when the skids go down that come up; then I hit against the lumber to run the cant across the machine.

Q. When a piece of lumber comes from the carriage which is not shown on this diagram, but it would be down here, the lumber comes along here; is every piece of lumber that comes along here sent to the edger? A. No.

(Testimony of Pete Matesco.)

Q. Where does some of it go?

A. Goes outside for orders.

Q. Does it come past the edger?

A. Past the edger?

Q. Does some of it that comes from the carriage where the log is being sawed, go to the gang-saw?

A. Yes.

Q. Those pieces, do they come past here?

A. No.

Q. They go another route?

A. First is the gang, then had the edger behind.

Q. They come over the gang-saw and go through that and then they come back and come through the long side of your machine?

A. Come across the same edger, but the other side.

Q. You have nothing to do?

A. No, have another man.

Q. Another operator? You have nothing to do with the long side of this machine? A. No. [182—129]

Q. You have to do with the rolls? A. Yes, sir.

Q. On one side of the edger? A. That is all.

Q. Now, Mr. Simpson's duties were to do what?

A. He spotted the lumber for me.

Q. Now, to spot the lumber—for instance, here is a piece of lumber coming down along the rolls he wants to take and send to the edger, what is his first duty?

A. To transfer from here to here, that is all.

Q. Does he set his block, his bumper?

(Testimony of Pete Matesco.)

A. His bumper—he see pieces come from the edger, he stay bumper up all the time.

Q. His bumper is lifted up?

A. Yes, and let him come down, because the timber when come to saw has to be down; lumber on the roll.

Q. Does he lift his bumper up and press his lever when he wants the piece to come on, or does he press the lever and bring the bumper up when he wants to stop the piece?

A. No, no; when wants to transfer to edger he keep bumper up. When he wants to send slab to slasher bumper goes down.

Q. By setting that lever, can he set that lever and keep the bumper up without keeping his foot on the lever?

A. Oh, yes, he don't need foot put on lever.

Q. He can set it and leave it that way?

A. Sure.

Q. Now, his first operation, if I understand you right, he would already have his bumper set, and then what does he do now to get this piece of lumber to go towards the edger-roll?

A. Over through right there.

Q. Is there another lever that he touches, or is that running [183—130] all the time?

A. No, roller running all the time.

Q. Then when he puts his bumper up there it would carry the piece over in here, is that right?

A. Yes.

(Testimony of Pete Matesco.)

Q. Between the roll leading to the edger and the roll case? A. Yes.

Q. And then from there who takes it and puts it on the rolls leading to the edger? A. Me.

Q. You do that. These chains here, these skids convey, when you press the lever, this timber over on the rolls that lead to the edger? A. Yes.

Q. And then some other chains comes on to go back in reverse position against these mechanical pointers? A. Yes.

Q. Are those called mechanical pointers?

A. Yes.

Q. From what position could Mr. Simpson do his work? Where would he have to stand?

A. Oh, he stand—when the mill first started I said to Simpson, I say, "Simpson, be sure watch out and stay outside."

Mr. MOULTON.—I want to object to this on the ground there is no allegation of contributory negligence. This evidence, if it tends to prove anything, tends to prove contributory negligence. The answer is a general denial; no defense of contributory negligence at all in the case.

Mr. ILLIDGE.—I think he may show where the plaintiff's position was to do his work.

COURT.—You can do that, but of course you can't [184—131] show contributory negligence; can't claim any benefit on that account.

Q. Mr. Matesco, will you tell us—can you point out on this diagram *here* Simpson was—what his po-

(Testimony of Pete Matesco.)

sitions were for doing this work, whatever work he wanted to do.

A. When that lumber came from here, up there?

Q. Yes, about where would he stand to do that?

A. He stand here.

Q. Indicating between the rolls leading to the edger and roll case?

A. No, inside. That is the roll case. We got lumber across machine, then he can't stay here and he can't stay there.

Q. He can't stand either side?

A. He will not best stay behind the machine.

Q. Had he ever been instructed not to stay behind the machine?

Mr. MOULTON.—I object.

COURT.—I think the objection is well taken. You have not alleged contributory negligence.

Q. I will ask you where the levers are located to do this work?

A. You got one there. Some have got here for short stub.

Q. Short stub about what length?

A. About 28 feet. When he passed 28 feet have to dump him behind it and in behind this roller here sometimes. Got double for some work.

Q. Two positions the levers are in?

A. Two positions.

Q. He can do the work from either position?

A. That is all.

Q. Now, this deal roll, if I understand you, is

(Testimony of Pete Matesco.)

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Q. Two positions the levers are in?

A. Two positions.

Q. He can do the work from either position?

A. That is all.

Q. Now, this deal roll, if I understand you, is

(Testimony of Pete Matesco.)

about four feet wide and is made of solid steel? [185—132] A. Solid steel.

Q. And the dead roll on the opposite side of the edger, is that of similar construction?

A. The same.

Q. Now, I will ask you if there is any guard between this dead roll—well above the dead roll, that arm that holds the logs on the rolls? A. Yes, sir.

Q. What is that guard made of?

A. To make more—

Q. What is it made of? A. Steel.

Q. Made of steel. Do you know how thick that steel is? A. About an inch and a quarter.

Q. How wide?

A. About eight inches wide, nine.

Q. Eight or nine inches wide? A. Yes.

Q. And the length of the roll?

A. About three foot and a half.

Q. And then resting on that arm is this piece. Have you any idea what the weight of that steel would be—guard? A. I can't tell.

Q. Would it be heavy?

A. It is heavy enough all right. I can't say. It is heavy enough, but I can't tell you how much weigh.

Q. Is this dead roll heavy?

A. The roll like Allis-Chalmers big one; smaller than Allis-Chalmers.

Q. It is smaller, Allis-Chalmers?

A. No, Filer & Stovel.

Q. The Filer & Stovel are smaller than Allis-

(Testimony of Pete Matesco.)

Chalmers? [186—133] A. Yes.

Q. You cannot, you say, give me any idea—you don't know what they weigh?

A. One hundred pounds, five hundred, I can't tell. Nobody can measure because stands solid in the machine.

Q. Are those saws completely hidden? Are those saws inside completely hidden? Can you see them from the outside with your rolls down? A. No.

Q. They are completely protected all around, is that right? A. That is it.

Q. Now, this lever here that you have testified that you used when you raise that to this position. What does that do? A. When I raise it?

Q. This lever, when you raise to that position.

A. The rolls stay up.

Q. The rolls would be in this position, and when you put that lever back what happens?

A. Rolls come down.

Q. Does that roll come down of its own weight, or what? A. Steam pressure.

Q. Steam pressure holds it down, or the steam pressure only raises it?

A. I think steam pressure holds it down and raises it too.

Q. Steam pressure raises it. Can you tell me whether or not you know whether the steam pressure holds it down, or whether it comes down by its own weight?

A. I can't tell you that, because when I raise the

(Testimony of Pete Matesco.)

roll up and the roll comes down, then I don't know from steam pressure; it comes itself. [187—134]

Q. But it comes down? A. It comes down.

Q. Does it promptly answer to the lever?

A. Yes, sir.

Q. How fast can you raise that roll and lower it?

A. One second.

Q. One second? A. Come down and raise up.

Q. Now, are you familiar with the construction of that mill—are you familiar with the tailer's position—the tailer on that edger? A. Yes.

Q. Do you know Mr. Nye, Fred Nye?

A. No. Maybe I know him in face.

Mr. MOULTON.—Stand up, Fred.

A. Yes, I know him.

Q. Do you know him? A. Yes.

Q. Did he work at the Oregon-American Lumber Company's plant? A. Yes.

Q. What work did he do?

A. Worked behind the machine.

Q. Working behind your machine; worked behind this edger we are talking about? A. Yes.

Q. In his position where he does his work, is that on the same level of the floor this edger is on?

A. No, sir, he is standing below.

Q. He is down in a pit? A. Yes.

Q. That pit is about how deep?

A. About I think two feet; maybe more than that.

Q. His position then is at least two feet or more lower than the main floor of the mill where the edger is?

(Testimony of Pete Matesco.)

A. Not the mill floor, just the roller case floor.

Q. Well, the floor on which the edger sets? [188—135]

A. Yes, the edger sets on the main floor.

Q. The edger sets on the main floor, and his position is in a pit about two feet or more below the main floor? A. No, no.

Q. You tell it.

A. Because it is two foot from the roll case. When the lumber come across the machine, two foot from the main floor; then he had a roll behind about two foot; two or two and a half, I don't know for sure.

Q. Is his position lower than the position of the edger, where he stands? A. Yes, must be.

Q. He stands in a pit? A. Yes.

Q. You say you saw Mr. Simpson when he was hit? A. Yes.

Q. Tell the jury just what Mr. Simpson was doing and how he was standing.

A. I stay right there you see—yes, I stay here; I hold that lever; when the machine kick back and Mr. Simpson got hit in the left side right there, and it knock him down, this board twelve, fourteen inches, maybe got six, eight foot to go through and split in two when it got kick; the rest of it split in two.

Q. Now, Mr. Simpson—can you show us on here where he was standing?

A. He was standing there.

(Testimony of Pete Matesco.)

Q. Indicating the extreme end of the rolls leading to the edger?

A. Yes, that is right; he stay behind this last roll.

Q. What was he doing there, if you know? [189—136]

A. He not do nothing, because we got nothing to saw across the machine; just where he take the logs in the carriage.

Q. New log coming on the carriage?

A. New log coming on the carriage.

Q. And you had to wait for material?

A. That piece was the last piece from the log, what hit Simpson.

Q. Do you know what direction Mr. Simpson was looking?

A. He look in the west, maybe looking ahead or maybe looking at me; but I know that machine, he stay that way, and he got hit right there.

Q. Standing with his left side towards the rolls?

A. Yes, left side.

Mr. KING.—I would like to have these charts marked C and D for identification.

Q. Mr. Matesco I will ask you whether that appears to you to be a correct diagram of a side view of the edger?

A. Yes. (Referring to Identification "C.")

Mr. ILLIDGE.—I offer in evidence the paper identified by the witness.

Marked Defendant's Exhibit "C."

(Testimony of Pete Matesco.)

Mr. MOULTON.—Of course I don't concede the accuracy of any particular measurement.

Q. Now, referring to Defendant's Exhibit "D" for identification showing the live rolls in front of the edger, I will ask you Mr. Matesco whether you recognize that as a correct diagram, as far as you are able to tell, of the live rolls and skids?

A. Of what?

Q. If that, as far as you can tell, is a correct diagram [190—137] of these rolls as far as you know.

A. I don't understand.

JUROR.—Does that look like your machine? Does that look like it does there in the mill?

A. That is the machine; that is the first roll. That is—we got here jump-roll, but he don't work; he is right in here.

Q. And you went on down—

A. This roll the same as this; these all rolls same line right here; these skids I raise up and spot lumber for my machine, this one; this line another skids when I want line them up lumber, I use these skids.

Q. Then if I understand, there is a jump-roll in here? A. Yes, jump-roll.

Q. Aside from that, does this look like a proper drawing of the machinery around there?

A. Of the machinery, that is it.

Offered in evidence and marked Defendant's Exhibit "D."

Q. What was the purpose of the jump-roll?

(Testimony of Pete Matesco.)

A. Behind the skids.

Q. The jump-roll is a roll that is ordinarily lower than the other rolls? A. Yes.

Q. Who presses the lever to bring it up in place?

A. Myself.

Q. When you press a lever that brings the roll up higher than the others?

A. Higher, to start lumber to go to machine.

Q. That jump-roll, is that always turning?

A. Rolling all the time. Between these rolls that jump-roll [191—138] running all the time, because connected with these skids and these skids are running all the time. When running these skids running the jump-roll.

Q. These other rolls now, have they any power?

A. No, they are dead rolls.

Q. These other rolls are all dead rolls?

A. Dead rolls.

Q. In front of the edger? A. Yes.

Q. Now, when you have a piece of lumber spotted up against your mechanical pointers or your rolls in front of the edger, what do you do to start it through the edger? A. I jump with this roll.

Q. To do that you press a lever. Is that right?

A. Yes, I got my foot.

Q. That makes the jump-roll come up?

A. Come up, then bring the lumber to the edger. Then when it bring the lumber to the edger got two rolls, feed roll and top roll. Then I got nothing to do no more. And these dead rolls are running, you know, along the board.

(Testimony of Pete Matesco.)

Q. In other words, when the jump-roll commences to move a piece of lumber the lumber is moving over the other rolls causes the dead rolls to turn around. Is that right? A. Yes.

Q. Now, when your piece of lumber—when the jump-roll starts your piece of lumber moving, and the piece of lumber gets to your edger-roll, the feed rolls and the dead rolls, the presser-roll, do you have to move a lever to open the rolls?

A. I got to step to raise up this jump-roll.

Q. You have done that, and the lumber is coming towards the edger, it is coming to enter the edger, and there are [192—139] two rolls there, a feed-roll and a presser-roll; do you have to do anything to either one of these rolls? A. No.

Q. Can that piece of lumber go right in the roll, or do you have to do anything?

A. No, sometimes doesn't go in there.

Q. It hasn't got there yet. When do you use this lever here?

A. I use to raise up that roll.

Q. Do you ever raise these rolls from the piece in there? A. Sure, every one.

Q. Then when the piece of lumber is being moved towards the edger by the presser-roll, you have to raise this lever high enough— A. Yes, sir.

Q. —to raise the dead roll? A. Yes, sir.

Q. So the piece can enter, and then you lift the lever. Is that it? A. Yes.

Q. And the presser-roll comes down then on top

(Testimony of Pete Matesco.)

of the piece of lumber and the lumber starts through? A. Starts through.

Q. Now, these rolls then have to be strong enough to force that piece of lumber against this saw; or could that piece of lumber go through without that roll pressing it at all? Do you know?

A. Oh, if no hot saw, sure can go through.

Q. Let me see if I understand you right. Suppose you raise this roll with your lever; you have the lever in a raised position here. How wide can you raise that roll, how high? [193—140]

A. Ten inch stick. I can raise the roll eleven inches, but ten inch stick can cross the machine. Inch higher can raise than the timber can cross the machine.

Q. You can take a stick ten inches thick?

A. Ten inches.

Q. And can raise the roll eleven inches?

A. Eleven inches.

Q. Suppose you have a piece of lumber coming in here, in the edger, and you raise your lever and hold it up there, don't leave the dead roll come down; say one inch material, would the piece go through the saws?

A. You bet, if any hot saw inside.

Q. *If have* hot saw that piece could go through?

A. Yes, because feed-roll running.

Q. The feed-roll. And is the jump-roll running too? A. No, jump-roll comes down.

Q. After the feed roll takes, the jump-roll goes down? A. That is right.

(Testimony of Pete Matesco.)

Q. Then it is just the jump-roll that is forcing it through? A. Yes.

Q. The jump-roll, is that smooth or corrugated?

A. Rough, rough roll.

Q. After the piece has passed the first two rolls, the feed-roll and the presser-roll and passes through the saw—the saw passes through it—then it is the live-roll which is another feed-roll?

A. Yes, that is a feed-roll.

Q. And the dead roll or the presser-roll on the back side I will call that, does that then take hold of the board too? A. The saw end is the first one.

Q. Same in the back? A. Yes, sir. [194—141]

Q. And the piece would pass then right on through? A. Yes, sir.

Q. This piece that hurt Mr. Simpson, it had gone through all but about six feet?

A. Six or eight, I can't tell.

Q. It had gone pretty well through? A. Yes, sir.

Q. But was still a considerable portion of it, and then it kicked back? A. Kicked back.

Q. Was there any warning?

A. No, I don't know myself how.

Q. Any chance to give any warning?

A. No, kicked back just like a bullet.

Q. Was going through when all of a sudden kicked back? A. That is all.

Q. Is that something that does happen with edgers right along?

Mr. MOULTON.—I object to that as leading. The question is leading.

(Testimony of Pete Matesco.)

A. Yes, most of the time.

Q. I will try not to be leading. Does that happen often, you say?

A. I have that before we got Simpson killed, and after too.

Q. Does that happen often, you say. You say you have worked at other mills? A. Yes.

Q. Grays Harbor, and I think you said had been since 1915 operating edgers? A. Edgers.

Q. I will ask you if you know of any edger that will not kick back? A. Every one.

Q. Every one will kick back? [195—142]

A. Every one when got a hot saw inside.

Q. Do saws frequently heat in cutting lumber?

A. Yes.

Q. Do they, or do they not?

A. Some slivers, you see, between the guide, they make hot saw and lumber catches in there, going to kick back.

Q. I am asking you, Mr. Matesco, whether that is something that happens very often, that the saws become heated, get hot from slivers.

A. Yes, get hot from slivers.

Q. Now, when a saw gets hot from slivers, what happens to saw? A. What happens? Smoke.

Q. Smoke when hot. What else happens to the saw? Does it do anything to the saw?

A. No, no. I mean we get the feed-roll and this presser to pull back, keep back, then we have to oil.

Q. When the saw is cutting a board that is perfectly straight, is that the idea, cuts right straight into the board?

(Testimony of Pete Matesco.)

A. No, when hot saw gets snaky.

Q. When the saw gets hot what does it do?

A. Gets like a snake.

Q. The saws gets out of alignment. A. Yes.

Q. And is wavey? A. Yes.

Q. Presses against the side of the board?

A. Yes.

Q. And that is what throws it back. Is that right? A. That is it.

Q. How many different kinds of edgers have you worked on?

A. I worked on the Diamond, and Filer & Stovel, and that edger [196—143] that is built down there in Everett. I forgot what they call that.

Q. About how many different tpyes of edgers do you think you have worked on?

A. About four—Filer & Stovel.

Q. On these other edgers, is it common for the saws to become heated? A. Yes, every.

Q. On all edgers the saws become heated?

A. Yes.

Q. If anything was wrong at any time with the machinery, and you reported it, was it promptly taken care of?

Mr. MOULTON.—I object to that.

COURT.—It isn't a question of what the practice was,—what it did in this particular case.

Q. On the day Mr. Simpson was injured, was this edger out of order in any way? A. No.

Q. Now, immediately after Mr. Simpson was hurt what did you do? A. On it?

Q. In regard to this edger, yes.

(Testimony of Pete Matesco.)

A. When he got hit, you see, I jumped behind him and looked because I got awful sorry, I got no heart left.

Q. You have no heart left, you say?

A. I got no lift, somebody else come and lift.

Q. What I want to know, did you look?

A. After that I looked at the machine; the saw was hot inside.

Q. You looked at the machine?

A. Was slivers between the saws.

Q. Now, to look at the machine did you have to raise the rolls? [197—144] A. Yes.

Q. You raised the rolls to look in at the saw?

A. Yes.

Q. And you found that the saws were heated? How many saws heated? A. One.

Q. One saw was heated?

A. One saw was heated.

Q. Now, can you explain?

A. The saw was heated before; maybe was four inches, six inches, I don't know; but that time it was hot.

JUROR.—It come so fast through there the saw wouldn't have a chance to cool off?

A. No, because that come just like bullet.

Q. I will hand you a photograph marked Defendant's Exhibit "B," and ask you to state or indicate where you set the saws.

A. Right there. That was when the board come through I stay, like that. That is it, you see. That is the line-up. I stay the side of the machine.

(Testimony of Pete Matesco.)

When I want to set the saw I got to move between the machines.

Q. And at that time is there anything moving on the rolls here? A. No.

Q. Or do you stop them?

A. Just as I put the board through it comes over at once, I don't know how myself.

Q. But when you are setting your saws, do you step on your jump-roll and have a board moving toward the edger?

A. I am right to set, and start the machine then by the jump.

Q. Can you control the board on the rolls leading up to the edger, leave it still if you want to, before it enters the edger? A. Yes.

Q. You can keep it still?

A. Yes. [198—145]

Q. And you kept it still while you are setting your saws? A. I kept it still on the skids.

Q. While you are setting your saws. (He indicates these levers right in front of the edger that he sets the saws in any position that he wants to.) Now these things that you set the saws with, you take that little lever in front of the edger and you move it one inch or two inches?

A. No, one inch, two inches, four inches.

Q. Up to four inches?

A. Yes that can reach to four inches; if we want how wide we can, just four inches.

Q. What kind of a thing is it that goes around there?

(Testimony of Pete Matesco.)

A. Got a little fork and kind of a plug, and got a plug on one side, and another here; we got a plug, some steel to hold the saw, to make right lumber; between these forks when you got split pieces, slivers coming inside between the forks and saw, then make hot saw.

Q. If I understand, just like the first and second finger? A. Yes.

Q. And saw in between the two. A. Between.

Q. And by moving these levers in front of the edger that moves this fork?

A. This fork, got a fork on the lever.

Q. And the fork moves the saw? A. Yes.

Q. Now, the slivers, did they get between the fork and the saw? Did you find some slivers in there?

A. Every day; every day maybe fifteen or twenty times, when we get bum logs. [199—146]

Q. Do you frequently look? Do you have any means of cleaning up these slivers?

A. Yes, I got a stick; maybe four feet stick, and I pull it.

Q. Do you have any other means of cleaning out these slivers or sawdust? A. I got air hose.

Q. Compressed air?

A. Yes, just clean them up, to just what number we set saws.

Q. Now as I understand, these saws are so completely surrounded that you cannot see in there, is that right? A. No, I can't see.

Q. Except as you raise the rolls and look?

A. Except raise the rolls and look in.

(Testimony of Pete Matesco.)

Cross-examination.

(Questions by Mr. MOULTON.)

How long does it take a saw to get so hot it will throw a board?

A. Maybe take minute, maybe three, maybe ten.

Q. Who is supposed to look after the saw and see that it isn't heated?

A. Who is? The edger-man.

Q. When it gets hot enough that it will throw a board it has got so hot that the saw itself is weaving, isn't it?

A. When get a hot saw, snakelike with machine.

Q. And it smokes. Before it gets that hot it smokes?

A. Smoke when put water or oil on it and cool it up. It don't smoke before.

Q. The fact of the matter is, that it is your duty to keep track of it and see it doesn't get that hot, isn't it? A. Keep what? [200—147]

Q. Keep looking at it, keep your eyes on it.

A. Eye?

Q. Yes.

A. You can't keep an eye on it when you got the saw inside.

Q. All you have to do is to shove down the lever and stoop down and look under and you can see it, can't you?

A. Yes, but I got no time to do that, because a board come behind me all the time. If I not get through lumber—put through lumber I catch them

(Testimony of Pete Matesco.)

going to give me, put the hell to me, that is all. I got no time.

Q. If you took time enough, if you have time enough you could keep track of it all right?

A. Yes, when I got time enough all right.

Q. And not let it get hot?

A. No let it get hot.

Q. You stop it before getting hot? If hot you do not run a board through?

A. That time was hot saw when Simpson got hurt, you see; too hot; was enough for smoke you know, it was just hot; if it was four inches or two inches machine, wouldn't kick back; was light stuff, one inch, that is what reason the machine kicked back.

Q. Now, then, Mr. Matesco, you had been having a good deal of trouble with this machine, hadn't you? A. Good deal of trouble?

Q. You had been having a good deal of trouble with the rolls on this machine, hadn't you?

A. Yes, I had sometimes, but when I report, see, they fix them up. [201—148]

Q. When you would lift up the rolls by pulling down on your lever, and then let your hand up, the rolls would not come back down, would they?

A. Sometimes not, but most every time, lots of times coming.

Q. Sometimes come and sometimes not.

A. Because if we don't know were running—

Q. You don't have to argue with me, you can answer and tell me what I ask you, and that is all

(Testimony of Pete Matesco.)

you have to do. Whenever it would not come down you would have to jerk the lever a few times to make it come down? A. Jerk the lever?

Q. Yes. A. No.

Q. You did that didn't you, Mr. Matesco, several times; quite often you would kind of jerk the lever to get the valve loose enough it would come down. Didn't you?

A. No, sometimes the board can't go through because the man sawing don't saw straight.

Q. Leave that out. Lets stick to the rolls.

A. Thats what I do. I do that to press the roll and the board comes through; but I said to the man to stay on the side of the machine, because the machine can't kick; if going to kick, not at the side.

Q. Whenever you get to jerking the rolls, it can kick, can't it? A. Yes.

Q. And the reason why it makes it kick to loosen up the rolls— A. Makes it kick?

Q. Yes. Why does it kick more when you loosen up the rolls, when the rolls come loose on it? Do you know? [202—149]

A. Because the board not straight maybe kick, maybe not.

Q. If the board lay perfectly straight and ran perfectly straight, it wouldn't kick if it didn't have any force on top of it at all, would it? A. No.

Q. If the board would stay perfectly straight and was no rolls at all on top of it, it wouldn't kick, would it? A. Sometimes. We can't tell.

Q. Now, when the board is in these saws there

(Testimony of Pete Matesco.)

is a saw on each side of the board, isn't there? If we suppose these were round saws—the saw sits up on each side of the board? A. Yes.

Q. The board fits just exactly between the two saws? A. Yes.

Q. And the space from one edge of the saws over to the other edge is about thirty inches?

A. Thirty inches?

Q. Yes. The saws are about thirty inches across?

A. Yes, thirty-two. We cut ten and a half inch stick.

Q. Now, then, Pete, if that board laying in there and running through all right causing no trouble, and the rolls up, if you put your finger on it, or shove it around ever so little, it would come back at once, wouldn't it? A. You mean—

Q. I say, suppose the board lay on there running perfectly straight, straight grain, straight line, everything going all right, and it is between these saws, if you just shove over just a little bit it would go back at once, just twist one side to the other?

A. No, sometimes no, you see. [203—150]

Q. Would be almost sure to kick back wouldn't it? A. Yes, sir.

Q. In other words, anything that binds the board on the saws makes it fly, doesn't it?

A. Make fly.

Q. Yes, it will fly back whenever—

A. Kick back.

Q. It will kick back whenever the board binds on the saws, won't it? A. Yes, sir.

(Testimony of Pete Matesco.)

Q. And these rolls, any of these rolls either in front or behind, they are not always clean, are they?

A. Clean?

Q. They don't always always stay perfectly clean, do they? A. You mean get—

Q. Get sawdust?

A. Sawdust—yes—no, no, because we clean every noon.

Q. But in spite of all you can do there is a little pitch gets on them, and sawdust gets in the pitch and things like that? A. Yes, sir.

Q. So they are not dead flat?

A. Sometimes dead flat, sometimes not. Sometimes get a little pitch; full of pitch.

Q. So if a board is loose in the rolls, if the rolls not getting a good grip on it, like that, and if the roll has a little pitchy spot or sawdust collection, when it goes around it has a tendency to twist the board a little, doesn't it? A. No.

Q. Isn't this true, Pete, as a general proposition: If the rolls don't set right down solid on the board, they are apt to stop halfway through, aren't they? [204—151]

A. Stop?

Q. Yes. A. No—sometimes.

Q. Sometimes stop and sometimes go, don't they?

A. Sometimes stop and sometimes go.

Q. And the same thing is true about their kicking back; if the rolls don't come down solid, they are apt to kick back, aren't they?

(Testimony of Pete Matesco.)

A. No, not going to kick back of machine if no hot saw.

Q. Won't kick back on any occasion if the saw isn't hot? A. No.

Q. You were having—how often did you have trouble with these rolls not coming down before Simpson was hurt?

A. Oh, when the mill started it was one machine; when the mill started it didn't come right—didn't come right down.

Q. Kept sticking and sticking?

A. Kept sticking, once in a while sticking.

Q. And you had to have the steam-fitter come several times and fix it?

A. Oh, yes, maybe once a week or once in two weeks, when it needed it.

Q. And that kept up for several months, didn't it?

A. No—for several months. Simpson, he only worked two months.

Q. Then after Simpson was hurt you still had trouble with it? A. No, sir, working fine now.

Q. Been working fine ever since fixing up those valves?

A. No, no, steam man didn't come after Simpson got killed.

Q. When did the steam man come?

A. He never come afterwards; I never see. See —I didn't report any more. [205—152]

Q. You quit reporting when Simpson got hurt?

A. Because was working fine.

(Testimony of Pete Matesco.)

Q. It had quit having all this trouble before Simpson got hurt, had it? A. Yes.

Q. How long before? A. How long before?

Q. Yes.

A. I can't tell. Maybe one, two, five, weeks.

Q. You think just about one day, Pete?

A. I can't tell.

Q. You are still running the machine now, aren't you? A. Yes, I run that machine now.

Q. When you did have trouble with it how high would it be in the air there when it would stop and not come down, how high would those rolls be?

A. These rolls sometimes catch feed-roll and roll both.

Q. Sometimes banged together, wouldn't they?

A. Not now.

Q. They did sometimes didn't they?

A. No, working fine.

Q. Been working fine the last few months, haven't they?

A. The last two months, no. Don't tell me. I tell you so. They working fine.

Q. Yes, work all right now, isn't it?

A. Working right along.

Q. How long has it been since it kicked out a board? A. How long?

Q. Now.

A. A week ago. I don't know who was working. I don't know who was working the machine, was extra man, I was off, because [206—153] I worked three hours morning and three hours after-

(Testimony of Pete Matesco.)

noon; then extra edger-man he kick machine back. I was on top at head rig and I see machine kick back.

Q. You don't know what caused that?

A. I don't know; I didn't see; I seen machine kick back.

Q. Isn't it a general proposition of this kind, Pete, that there is something the matter with the machine, or is operated wrong, or it doesn't kick back? A. Every one kicked back.

Q. Every one if operated—

A. Every one kick back.

Q. How often did it kick back?

A. Maybe sometimes kicks once in six months; maybe sometimes kick once every month.

Q. How often had this one kicked back before Simpson was hurt?

A. That kicked back about a month before got Simpson killed.

Q. Hadn't it in fact been about as often as two times a day that a board would start in there and stop? A. Kick back?

Q. Many times not kick back? A. No, sir.

Q. Didn't you have a lot of boards there that you would start through the edger and they wouldn't go, they would stop halfway?

A. They wouldn't go? No want to go because lots of boards was cracked and you don't want to go through.

Q. Those rolls were not coming down solid, were they, to hold them on?

(Testimony of Pete Matesco.)

A. I tell you sometimes stick, sometimes not; what you ask me?

Q. I want to find out how often they stick. [207—154] A. That is it.

Q. How often would they stick; how often did they stick, when sticking, before Simpson was hurt?

A. How often?

Q. How many times a day?

A. Oh, sometimes it didn't stick once a week, and sometimes stick two or three times a day; sometimes stick once in two or three weeks. That is it.

COURT.—Had only been operated at the time Simpson was hurt—machine had only been operating for six weeks.

A. Six weeks?

Q. Yes.

A. I think about two months, six weeks; I don't know.

Q. You began the last day of July didn't you?

A. This mill started 9th of last July.

Q. Wasn't it the 31st day of July? A. 31st?

Q. Yes. A. No.

Q. He was hurt the 11th of September, wasn't he?

A. I don't know what day he was hurt, you see.

Q. So it hadn't been over about two months, had it? A. Yes, something like that.

Q. How do you fix in your mind the fact that you quit having trouble with it when he got hurt?

A. Me quit have trouble?

Q. Yes. You said working fine when he got hurt?

A. Was working fine that time too.

(Testimony of Pete Matesco.)

Q. How do you fix that in your mind? How do you remember [208—155] that so particularly?

A. How I remember?

Q. Yes.

A. You go edger about how it kick; I don't ask nothing about it, because edger can't speak, by God, like me and you.

Q. You like to talk too much and not listen.

A. I not like to talk no much. I don't like you asking many times, that is all.

Q. I want you to tell me how you come to fix in your mind, how it is that you remember that this trouble you had had with the edger had stopped when Simpson was hurt?

A. We got too many trouble.

Q. You had had trouble when it first started, hadn't you?

A. Yes, once in a while. Didn't I tell you stick?

Q. Yes, you told me that. When did that stop?

A. When did that stop?

Q. Yes. When did it quit doing that?

A. Maybe to-morrow—to-morrow it may be going kick back, I can't tell you. Machine can kick back any time.

Q. Now, then, do you know that the trouble you had had with that edger had stopped at the time Simpson was hurt? A. Had stopped?

Q. Yes.

A. One time kick four-inch cant and here is another cant what he got for the gang, and four-inch cant—

(Testimony of Pete Matesco.)

Q. You are not answering. A. No.

Q. I will have to give it up I guess. When it did kick back boards, did they always fly straight? [209—156]

A. Every one fly straight.

Q. Don't many of them fly off the side?

A. If he go on the side, board on the side, sometimes six foot stick, I mean wide; all right; then one piece is another side; he can kick on the side.

Q. They fly up in the air, they don't just roll along the rolls? Some of them go right up in the air?

A. Be some knots, or some piece like that, then go in the air. If board go in the air they go straight in line.

Q. What did you do then when Simpson was hit? What did you do; what was the first thing you did?

A. What did I do?

Q. Yes.

A. I was operating the machine.

Q. You saw Simpson get hit?

A. Yes, I seen him.

Q. You were standing here at the edger and Mr. Simpson was here. What did you do first?

A. I jumped and see Simpson; I see lots of blood there.

Q. Where did you go? Did you go up towards where he was?

A. No, no. I was in roll case. This roll case. I step in this roll case. You see I was there, I

(Testimony of Pete Matesco.)

step in this roll case and see Simpson from the roll case.

Q. How far down the roll case did you go?

A. About thirty feet.

Q. You got about thirty feet down the roll case?

A. Yes.

Q. And stood there and saw all the blood and everything? A. Yes.

Q. And the boys had gathered around him and were looking [210—157] at him?

A. I got no heart, you see, I can't see that.

Q. Were kind of sickened?

A. Just make me sick.

Q. Looked down around and went back to the edger? A. Yes.

Q. How long was it before you got back to the edger? A. About two minutes.

Q. Had they picked him up when you got back to the edger?

A. Yes, picked him up, you see; see was hit.

Q. You say the boys had picked him up when you got back to the edger?

A. I stay down by the edger when they pick him up.

Q. And then you looked at the saw and found it was hot? A. Yes.

Q. Was it real hot? A. No, saw real hot.

Q. Wasn't very hot? A. No.

(Testimony of Pete Matesco.)

Q. Not hot enough to make the saw weave, was it? A. No.

Witness excused.

Recess until two o'clock. [211—158]

Thursday, June 12, 1925, 2 P. M.

TESTIMONY OF T. A. COLEMAN, FOR DEFENDANT.

T. A. COLEMAN, a witness called in behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. KING.)

Where do you reside, Mr. Coleman?

A. Longview, Washington.

Q. Do you hold any official position there with any company?

A. I have been with the Longview Lumber Company ever since I have been out here, two and a half years.

Q. Long Bell Lumber Company, you say?

A. Yes, sir.

Q. Tell the jury what experience you have had with sawmill machinery and sawmills? How many years experience have you had?

A. I have had about fifty years.

Q. With what various machines has your experience been? What machines have you handled?

(Testimony of T. A. Coleman.)

A. Practically every machine that is in the sawmill.

Q. Did you ever design and construct a sawmill.

A. Yes, sir.

Q. What place was that?

A. Well, I have been with sawmills in Mississippi, Alabama, Texas, Louisiana.

Q. I didn't hear that last answer.

A. I was with sawmills in Texas, Louisiana, Mississippi, Alabama, and now in Oregon.

Q. Are you familiar with the machine known as a gang-edger [212—159] in a sawmill?

A. Yes, sir.

Q. Do you know how it operates? A. Yes, sir.

Q. Are you familiar with the Filer & Stovel gang-edger? A. Yes.

Q. How many years experience have you had with these?

A. Well, I have had experience thirty years or more.

Q. Are you familiar with the valves on the Filer & Stovel edger? A. Yes, sir.

Q. Mr. Coleman, I will hand you an object here, and will ask you to state what that is, if you know.

A. That is a valve on the left cylinder of the gang-edger.

Q. Can you just unscrew that there and show what is inside of it. That is the valve on the cylinder for the presser-roll, isn't it?

A. The lift cylinder that lifts the presser.

Q. Can you bring that piece out inside?

(Testimony of T. A. Coleman.)

A. I am trying to get it out now.

Q. That is the piece inside of it. Now, Mr. Coleman, while you hold this there, I direct your attention to a chart marked Defendant's Exhibit "C." I direct your attention to the little drawing up here in the upper left-hand corner. Do you know what that represents?

A. That represents this valve. Cross-section of it.

Q. Cross-section of the inside of the valve?

A. Yes.

Q. What is the little part in there shaded in red, what does that represent?

A. That is this valve here.

Q. Does it represent a cross-section of this at the end of [213—160] it or in the middle of it?

A. In the middle, right through here.

Q. Can you tell from looking at that drawing, where the steam comes in? A. Yes.

Q. Where does it come in?

A. Enters down through there.

Q. This valve is fastened on the cylinder here, isn't it? A. Yes.

Q. So when the steam comes in and comes down through here and up through there, over in here, it will be coming into the cylinder? A. Yes.

Q. How is the position of this center piece changed? How do you move to change that?

A. This hand lever here; it lifts that up to this position and opens it up.

(Testimony of T. A. Coleman.)

Q. When it is lifted up to this position the valve is in that position there?

A. The valve is in that position there.

Q. What do you do to let the steam out?

A. Just let go of this, or pull down there; supposed to drop down when let go of it; usually they push it down.

Q. When it is in the down position what position is the valve in then?

A. This port here covers that port there.

Q. The way it is shown in the drawing over on the right-hand side?

A. This port here covers that port there, and this opens and lets the steam or air out through there.

Q. What does the drawing represent over in the upper right-hand [214—161] corner there. What position is the valve in there?

A. Well, that is partly closed.

Q. Isn't it completely closed to let the steam out there?

A. No, this port here ought to be down past there.

Q. You think the drawing is not quite accurate?

A. No, that is right.

Q. So that steam comes out the cylinder over here through this channel here, and then goes out this exhaust?

A. Yes, that is it. That shows it right. Whatever air is in comes out through here and around down here.

Q. You use the word air?

(Testimony of T. A. Coleman.)

A. Or steam, either. Most of them operate by air nowadays. Used to in the old days use steam.

Q. Is there anything wrong with steam operation?

A. No.

Q. Now, there has been some testimony here about presser-rolls. Do you recognize on this Defendant's Exhibit "C" this chart where supposed to be a side view of the edger—can you tell which one of those rolls is the presser-roll?

A. That is the presser-roll.

Q. Is there more than one presser-roll?

A. There is one in front and one behind.

Q. Now when you lift up the lever there, what happens to the presser-rolls?

A. Lifts them up to this place.

Q. Lifts both of them up at once? A. Yes.

Q. What causes them to drop?

A. The pressure of steam or air coming in on top of this cylinder piston. [215—162]

Q. What does that do to the piston?

A. Press the piston down and leaves them up; the piston goes down and this—

Q. They say they can't hear.

A. The piston moves down and pushes on this fulcrum here and lifts these rolls.

Q. What do you do after the lumber is in the edger and you want to drop the presser-rolls down; how do you do that?

A. Push the lever down to this position; it will come, and it drops to that position.

(Testimony of T. A. Coleman.)

Q. What happens to the piston when the lever drops down that way?

A. The piston comes back to the top of the cylinder.

Q. What causes it to move back up there?

A. The weight of these rolls.

Q. Forces it back up. When the presser-rolls drop back down on the live rolls, is there any steam pressure that presses them down on the lumber?

A. None that I ever saw.

Q. Just tell about the construction of this cylinder there and piston. Is there any place for the steam to work on both sides of the piston?

A. Whatever I have seen, the cylinder is open end; nothing or no way for air or steam to have the pressure to push that piston up; same as your automobile cylinder.

Q. And the piston is caused to return to position by the weight of the presser-rolls when they drop down?

A. By the weight of the presser-rolls as they drop down.

Q. You are familiar with the Filer & Stovel gang-edger, are you? [216—163] A. Yes.

Q. Now, does the steam pressure press the rolls down on the lumber on these gang-edgers?

A. They do not.

Q. What holds the pressure of the rolls down on the lumber? A. Just the weight of the rolls.

Q. Now about what size are these presser-rolls on

(Testimony of T. A. Coleman.)

the big size Filer & Stovel gang-edger. How thick are they in diameter?

A. Well they are—at Longview are twelve inches in diameter. I don't know now over at Vernonia what they are, maybe ten inches; I don't know what they are.

Q. The testimony has been they are eight inches.

A. Well, maybe eight inches.

Q. I will ask you this further question. How are they constructed, presser-rolls? Are they solid iron or hollow?

A. Pipes with heads put in the ends of them; gas-pipe with cast-iron head in the end.

Q. How much would they weigh?

A. Taking frame and all—I don't know. I couldn't say just what they would weigh.

Q. Have no idea on that?

A. They would weigh three or four hundred, maybe more; maybe twice that much; I wouldn't say what they would weigh.

Q. How much did you say those would weigh?

A. Three or four hundred; maybe twice that much; five hundred. I wouldn't say what they would weigh. There is a big cast-iron yoke frame connected with them. Would be hard to say what they would weigh. [217—164]

Q. I don't think it is clearly understood, couldn't hear. Will you kindly describe the cylinder there again, so they can hear it, over here. About the construction of the cylinder at the bottom, how that is.

(Testimony of T. A. Coleman.)

A. Well the bottom of the cylinder is open end. Steam comes in the top and pushes down; connection to this point here and lifts these rolls. When the steam is let off the weight of the rolls, they drop down and push the piston back up to the top of the cylinder.

Q. Is there any steam that holds the presser-rolls down?

A. No, there is no steam that holds the presser-rolls down.

Q. And there is no chamber for the steam to get into that would press to hold them down?

A. Nothing at all. It is an open-end cylinder.

Q. Now, suppose a piece of lumber had started into the edger and that piece of lumber were thirty feet long and had gone through the edger at least twenty or twenty-two feet; would you say that the presser-rolls would have dropped clear down by that time and released the steam?

A. Well, if there was nothing to keep them from dropping down.

Q. Well, I presume that the lever was put down. Assume that the edger-man pulled his lever down.

A. If the edger-man pulled his lever down there is nothing to hold them up.

Q. And if there is nothing to hold them up what would happen to them?

A. They would come down on the lumber.

JUROR.—Did you ever have one stick? There has been testimony those valves stick. Have you ever seen one [218—165] stick in the cylinder?

(Testimony of T. A. Coleman.)

A. Never saw one stick coming down. Have seen them when they don't have steam pressure enough to lift them.

JUROR.—Was testimony here they stick coming down, and I wondered if you ever saw one that stuck. A. I never did.

Q. Mr. Coleman, do those edgers ever kick back, kick the lumber back?

A. I have seen pieces thrown out of the edger.

COURT.—What do you mean by thrown out?

A. The saws would catch them and they run—the lumber is traveling against the tooth of the saw, and if they catch on the back side of the saw it throws them out.

COURT.—You mean throws straight back?

A. Throws straight back.

COURT.—Would it do that if the pressure-roll was down? A. Yes.

Q. Does the mere fact that the presser-roll is down—is that any guaranty that they won't kick back? A. No, sir.

Q. Have you ever seen an edger that didn't kick back, that you worked around? A. Never have.

Q. Now you are familiar with the construction and layout of sawmills? A. Yes, sir.

Q. You are familiar with the position of the edger-tailer, the man known as the edger-tailer. Now, suppose that indicates the edger and the dotted lines are the level of the rolls leading up to the edger, and the level of the [219—166] tailer-table part of the edger, and this heavy line the floor of the

(Testimony of T. A. Coleman.)

sawmill as it goes up towards the edger, will you explain to the jury what rests on the level of the floor at the point of the edger?

A. That is the floor in front of the edger and that is the floor behind the edger. I don't know what drop they made in there, the floor there, but usually it is two feet; the one at Longview is thirty inches drop in the floor there; this man at the tail of the edger would be standing on the floor there thirty inches below the top of this line here.

JUROR.—Standing level with the main floor there? A. Level with this main floor.

Q. Would be standing on a suspended platform about like that; is that right? A. Yes, usually.

Q. Will you tell the jury how tall the Filer & Stovel edger is; how tall it stands above the floor on which it sets; how many feet?

A. This point in that floor to this is thirty inches.

Q. That is to the top of the rolls?

A. Top of the rolls.

COURT.—How far does the edger extend above that, to the cover at the top of the edger?

A. That part up there is something around thirty-six inches above this part.

Q. In other words, the top of the edger then is five and a half feet above the floor. Is that correct?

A. Yes.

Q. Have you ever had experience in and about the station [220—167] of the edger-tailer on the Filer & Stovel edger? Have you ever been around where he works in his position?

(Testimony of T. A. Coleman.)

A. Yes. Some of them stand plum at the far end, down around the floor where this floor is raised up again to that level, and some of them stand on the suspended floor, in the middle of the back edger-table.

Q. The edger-tailer stands there in his position on the Filer & Stovel edger, in the position indicated; could the edger-tailer see what took place in front of the edger? A. I don't think he could.

Q. What causes the pieces of lumber while coming through the edger and while the presser-rolls are down, what causes them to kick back?

A. Well, there is various causes for that; hot saw, that is spread and running apart; would get pressure enough on it to throw it back.

Q. What would happen if there was something there holding the lumber firm so it couldn't kick back?

A. I have never seen anything yet that would hold it so it wouldn't kick back.

Q. And will it kick back even if the presser-roll is down? A. Yes.

Cross-examination.

(Questions by Mr. MOULTON.)

It is much more apt to kick back if the presser-roll is not setting down solid, isn't it Mr. Coleman?

A. Well, possibly it would.

Q. Anything that permits the lumber to be swung from side [221—168] to side as it goes through

(Testimony of T. A. Coleman.)

the saw in the edgers, leads to the danger of kicking back, doesn't it?

A. Well, anything that would cause the lumber to catch the back side of the saw, saw teeth would catch in it.

Q. If the rolls were touching but only touching lightly then the lumber would have a tendency to be easily diverted from its course, wouldn't it?

A. I don't know.

Q. For instance, if was a little pitch or sawdust on the rolls, that coming over might shift the lumber off from the straight line, might it not?

A. Well, that wouldn't make—saws has to be either running bad or spreading, running apart so they make a hard pressure on the board—usually make a piece kick back—or sliver or broken piece that would catch the saw.

Q. Anything at all that lets the board bind on the saw will produce a probability that it will kick back, won't it? A. Well, yes.

Q. If the rolls don't come down good, if hard to get them down and they only touch it lightly, there is a great tendency for the boards to swing around as they go through, and kick back, isn't there?

A. Well, they kick back just as much from the edger that has nothing to hold the rolls up but the board, what they call the board-edger; no cylinder or nothing connected with it at all, but the pressure of the board running under the roll that holds it up.

(Testimony of T. A. Coleman.)

Q. Any other force than the board on that?

A. No edger ever I saw that had anything but the weight [222—169] of the roll to hold it down.

Q. You do know a great many of these steam cylinders used around sawmills, whether for edgers or what not, are constructed so they can take the steam from above and below the piston, are they not? A. I never saw one.

Q. Never saw the main saw log-deck that would do that? A. Yes.

Q. That is the same kind of a cylinder?

A. No.

Q. Just a steam cylinder with a port at each end?

A. A lifting cylinder on an edger is open at the bottom the same as an automobile.

Q. There are a great many steam cylinders used around a mill that receive steam from each end? A. Yes.

Q. And the force of the steam one way will drive it in one direction? A. Yes.

Q. And when you reverse or force the steam pressure the other way, will drive in the other direction? A. Yes.

Q. That is the way an ordinary steam-engine works? A. Yes, sir.

Q. And you use lots of those cylinders around a mill? A. Yes, sir.

Q. Where you want to drive a thing in one direction and then drive it back again?

A. Yes, sir.

(Testimony of T. A. Coleman.)

Q. But in this particular kind of an edger you think they use it only to drive down?

A. Yes, that is all.

Q. What is it that will make the roll stick and not come down freely? [223—170]

A. I don't know of anything if the operator throw his lever down and not hold it up, so that the steam is shut off from pressing down on the piston.

Q. Suppose you were in a mill and the edger-man came over and said, "My rolls won't come down." What would you think was the matter?

A. I wouldn't know until I examined it and saw.

Q. Wouldn't you first look to see if the valve would let the steam out of the top of the cylinder freely? A. Yes.

Q. And if the steam would not come out freely and promptly from the top of the cylinder, when the rolls started down, they would drive the piston up against that steam that was in there, wouldn't they?

A. I say, if the steam wasn't let out the top of the cylinder of course the rolls wouldn't come down.

Q. And that would be what would be the matter. There would be something the matter with the valves that the rolls wouldn't come down free, wouldn't there?

A. If the rolls wouldn't come down, there would naturally have to be something wrong with the valves.

(Testimony of T. A. Coleman.)

Q. And that would be the job of the steam-fitter, wouldn't it?

A. Well, it might not be for the steam-fitter; he might not understand the working of the valves; all he may know is how to screw a pipe in, or screw it out.

Q. Pretty poor steam-fitter.

A. Lots of steam-fitters don't know the working of valves.

Q. There isn't anything else that you know that would keep these rolls from coming down freely, but some defect in [224—171] *in* the valves. That is it, isn't it?

A. They would have to be. If the rolls didn't come down would have to be something to hold them up.

Q. Something wrong with the valve. You don't know of anything else that could do it, do you?

A. No.

Q. And if they didn't come down freely would it not thereby increase the danger of the boards flying back? A. I don't know as it would do that.

Q. Well, it would, wouldn't it?

A. Well, a few years ago there was no presser-roll on the front side of the edger.

Q. What was the reason they put one on?

A. To make it feed better.

Q. Just exactly that reason, wasn't it? Because there was so much damage done by boards binding on the saws and kicking back?

A. Made them feed better and faster.

(Testimony of T. A. Coleman.)

Q. And the subject of the boards kicking back in the edger has been the source of considerable trouble off and on a great many years?

A. They kick back when the edger didn't have anything to raise the rolls but the board passing under it. That is no steam cylinder connected with them at all.

Q. A reason for that is that roll is made light?

A. No, usually heavier; be no heavier according to size, than them rolls; some of them solid rolls.

Q. Isn't it true, Mr. Coleman, that wherever you run a circular saw, whether one or more, into a piece of timber, or whatever size it is, it is always an important matter [225—172] to make sure that that board or cant or log or whatever you saw with it, shall be firmly held in the line in which it starts against the saw? That is true, isn't it?

A. Well, the feed-rolls here on the bottom is all that guides and controls the board passing straight through the edger.

Q. Take the main saw, the ordinary main saw on the carriage. How do you hold the log in place there? A. On the carriage with the dogs.

Q. You dog it down solid? A. Yes.

Q. And you don't take a chance of its laying of its own weight on the saw, do you?

A. Oh, they do the heavy logs when flat side down. A number of times they never put a dog in it.

Q. If it is at all in shape it can move from one side to the other, it is apt to be thrown by the main saw, isn't it? A. It would in circular saw.

(Testimony of T. A. Coleman.)

Q. Any circular saw has a tendency to throw any lumber that is being sawed by it, that is permitted to swing around, as being driven against the saw, isn't it? A. Yes.

Redirect Examination.

(Questions by Mr. KING.)

Mr. Coleman, if the presser-rolls once start down would the exhaust in the valve have to be open before they start down?

A. Certainly the exhaust of the valve would have to be open before they would start down.

Q. Suppose the exhaust in the valve is open, so the presser-roll starts to fall. Is there anything in the Filer & [226—173] Stovel edger that would prevent it from going clear down?

A. Nothing that I know of.

Q. When you answered the question of Mr. Moulton to the effect that if the presser-roll stayed up there must be a defect in the valve, you meant to say that if they remained up in the air there was a defect in the valve?

Mr. MOULTON.—I object to that question as leading, argumentative—arguing with his own witness.

Mr. KING.—I withdraw that; that goes to the form of the question.

Q. I will ask, then, what you meant to say in answer to Mr. Moulton's question that there must be a defect in the valve if the presser-roll remained up?

(Testimony of T. A. Coleman.)

A. Well, they wouldn't necessarily need to be some defect in the valve. The operator might not have thrown his lever down to let the steam out of the top of the cylinder.

Q. Now, if he threw his lever part way down so that the valve was partly open, would the presser-roll come down?

A. If they started down at all they would come down.

Q. If they started down at all they would come clear down. Is that right? A. Yes, sir.

Recross-examination.

(Questions by Mr. MOULTON.)

Can't you conceive of such a situation, Mr. Coleman, as that the steam would be enough released that they would be brought part way down, but they wouldn't come down with their own weight?

A. If they started down at all that would indicate there was not enough pressure on the piston to hold them up. [227—174]

Q. There might be some pressure on the piston, partially holding them up, or retarding their downward course, and still not enough to lift them. That is true, isn't it? A. It could be true.

Redirect Examination.

(Questions by Mr. KING.)

If there is some pressure in there so as to retard their downward course, would it retard it for a period of time while a one-inch piece of lumber

(Testimony of T. A. Coleman.)

was going through the edger for a length of twenty-two feet? A. No, I don't think it would.

Q. How quick will a presser-roll drop if the valve is clear open? How much length of time?

A. Well, they will drop just as fast as the weight you would hold up and let go of it would drop to the floor. I don't know what speed that would travel.

Q. Did you ever see a presser-roll dropping slowly by retarded steam?

A. No, I don't know that I ever did.

Q. Now, suppose the roll at the time of the accident was down and touching the lumber. Would you say that any steam was then holding it up?

A. No, I wouldn't think would be any steam holding it up if it was down on the lumber.

Q. Would it be possible to touch the lumber and at the same time be held up by steam?

A. No, it wouldn't.

Recross-examination.

(Questions by Mr. MOULTON.)

Now, Mr. Coleman, do you really mean [228—175] that; it would be possible for it to stand at any point between its extreme downward point and its extreme upward point, and be held by steam, wouldn't it? A. No, not if down on the lumber.

Q. That operator can take his roll and put it wherever he wants it?

A. He can lift it up, but he can't put it down only by its own weight.

(Testimony of T. A. Coleman.)

Q. But he can stop it halfway up, can't he?

A. He would have to be an expert if he did.

Q. Can't he let in enough steam with that lever to stop it halfway up?

A. No, that is a hard thing to do. When you move that lever it goes clear up.

Q. Don't always go clear up every time?

A. If have pressure up it does.

Q. What makes it stand six inches up?

A. If he lifts his lever up there it would stand up in that position.

Q. That is, if he would hold his lever and let it drop back that far?

A. No, you can't do that. When you start it down it comes down.

Q. You can let off any amount of steam you want, can't you? You can, can't you? A. No.

JUROR.—Mr. Coleman, on these two ports here is it possible with a rotary valve to shut off both ports? What I mean, that long section, is it long enough to cover both ports of the valve; can he open the admission port and [229—176] hold it just open to let the steam in and bring that valve back to block both ports and hold the steam captive?

A. If he done that have to be very careful and move very slow until the rolls start to lift. That is a hard thing to do, to move the value and hold the rolls in any one position.

Q. You do realize, Mr. Coleman, that this part here used to slide back and forth and shut off the

(Testimony of T. A. Coleman.)

intake at one point and shut off the exhaust at the other is long enough that in one position it will take both intake and exhaust, don't you? You can see that on the map, can't you?

A. If the valve is properly made, when it closes this it has to open that.

Q. Let's see whether that is correct. Isn't it just as far in the little red part there I indicate with my knife, as it is in the open white part, at that part?

A. This drawing may show it, but when this point here closes, that has got to be open down here.

Q. If it closed clear over?

A. No, the instant that point there touches there, this is open here.

Q. Well, examine it here in this one. On both of these drawings doesn't it show that this part of the valve which closes the intake, in the one instance, or the exhaust in the other, is long enough that if it is stopped at the right moment it will close both intake and exhaust at the same time?

A. Well, this drawing might show it, but that shows it wide open. [230—177]

Q. Yes, that shows that one wide open and this end —to make it clear to you, this end, it has to be that way, hasn't it? A. Yes.

Q. Then this end has to be long enough that when it is turned over here, when this end slides over, this end will be fully covered?

A. When that point there touches that point there, that is open there.

(Testimony of T. A. Coleman.)

Q. Then when you bring it around in the position it is in now, they will both be open, won't they? It has either got to be long enough to close them both at one time, or it can't in any position close first one and then the other?

A. This has the whole width of that to close this port; only got the width of that to close this port and open that one.

Q. Without arguing the point, doesn't it show by both of these charts that there is a point in that red valve can be stopped, which will close both the intake and exhaust port?

A. It may show it on that chart, but a valve is not made that way.

Q. In other words, if it is made that way, it is defective, isn't it?

A. No. The valve is made when it closes the intake, the instant it closes that it opens this.

Q. You could stop that valve part way, couldn't you? A. You could.

Q. So that your intake port would be part open?

A. You could.

Q. And the same thing could be true of your exhaust port, [231—178] it would be partly closed?

A. Yes, you could have the exhaust port partly closed.

Q. Coming back to this proposition, you don't seem to have had much experience with rolls that would stick and not come down?

A. I never have had any experience—that I have

(Testimony of T. A. Coleman.)

had experience with them where couldn't get them up, but never had experience where wouldn't come down.

Q. If the operator of this edger has testified those rolls would stick and wouldn't come down, that is something you don't really know much about, isn't it?

A. Well, there could be cases that I never saw.

Q. Now, if they stick and don't come down freely, isn't it perfectly possible they might come down to a point where they just touched the board and don't bring any considerable pressure to bear on it; they are touching it enough to help feed it through and still not pressing on it with enough weight to hold it straight. Can't you conceive of such a situation as that?

A. The press-roll has nothing to do with holding the board straight.

Q. You don't think that the weight of these heavy rolls, three or four or five hundred pounds on these boards, when it stood on this edger, has anything to do with holding it straight? A. No, sir.

Q. Isn't is a fact that that is all they are there for, to hold it straight?

A. All they are there for is to put the pressure on to make them feed. [232—179]

Q. You don't care whether it goes straight or not?

A. They have nothing to do with making them go straight.

Q. What does make them go straight?

(Testimony of T. A. Coleman.)

A. The rolls that they are resting on, that they are traveling on.

Q. Do you think you can depend entirely upon the roll down here to make them feed straight?

A. Certainly you can.

Q. They have all sorts of things to deflect them, haven't they? A. No.

Q. Any little sliver under them, or any accumulation of sawdust and pitch, or anything like that on the rolls, would have a tendency to deflect them from a straight line, wouldn't they?

A. Well that is something; four feet from saw to to saw running fifty feet through the edger, and forty feet of it sticking out behind, traveling on the rolls, won't it hold that down?

Q. That is why you have those rolls heavy, isn't it?

A. No, sir; the weight of the rolls is to push them down to make it feed the cant through.

Q. Isn't it true you never undertake to operate any circular saw now without some device in connection with it which is calculated to hold the timber or lumber, whatever kind that is being cut, in a straight line?

A. The rolls that is traveling on holds in a straight line, but the rolls pressing on top of it has nothing to do with that. [233—180]

Redirect Examination.

(Questions by Mr. KING.)

Mr. Coleman, you didn't make the drawing there in evidence, did you, Defendant's Exhibit "C"?

(Testimony of T. A. Coleman.)

A. No, sir.

Q. Never saw that until you came into the court-room? A. Never did.

Q. Now could you fish out that inside piece again and hold it up and see the thickness of it? I understand you to say that is the operation of the inside of the valve; this large piece is not big enough and not in such position that it will close both the steam intake and steam outlet from the cylinder at the same time?

A. This part of this valve represents that part. It is not wide enough from here to here to cover that point and that point.

Q. I mean if the drawing were on the correct scale, it would not be wide enough?

A. No, to cover them two points.

Recross-examination.

(Questions by Mr. MOULTON.)

But Mr. Coleman, in regard to that same thing—we have been over it several times—if you held this valve—

A. There ought to be a line on the outside which shows the ports.

Q. There isn't any that will help at all. Well we will give that up. [234—181]

A. There ought to be a line there that shows the ports.

Q. You say it is possible to hold that valve so that at one time it is admitting some steam, but

(Testimony of T. A. Coleman.)

only a little; you could hold it in that position with your hand, couldn't you?

A. If a man can take time enough to move it slow enough, but he can't do it in quick operation.

Q. Can't do it in any quick operation?

A. No, sir, unless an edger-man is used to raising and lowering pressure rolls.

Witness excused. [235—182]

TESTIMONY OF IRA MANN, FOR DEFENDANT.

IRA MANN, a witness called in behalf of the defendant, being first duly sworn testified as follows:

Direct Examination.

(Questions by Mr. KING.)

Where do you reside?

A. Vernonia, Oregon.

Q. May I ask you how old a man you are?

A. Yes.

Q. How old? A. 58.

Q. How many years experience have you had in connection with sawmills and steam engineer?

A. Oh, that is different; I have been connected with sawmills for the last five or six years. Steam engineer, I have handled steam for over thirty-five.

Q. Are you acquainted with what is known as the Filer & Stovel edger in the Oregon-American Company mill there at Vernonia?

A. Not being edger-man, I am not.

(Testimony of Ira Mann.)

Q. Are you acquainted with the type of valve that is used on that edger? A. Yes.

Q. What would you call that valve?

A. I would call it a quarter-turn valve.

Q. Quarter-turn? A. Yes.

Q. Can you see the chart there, Defendant's Exhibit "C"? Do you recognize what it is up in the left-hand corner?

A. That is the valve and the jacket and the operation of it.

Q. What appears in the upper right-hand corner?

A. Same thing, only in the opposite position. [236—183]

Q. That is a cross-section of the center of the valve? A. Yes.

Q. Now, on this chart here, where is the valve located on this central part. Point that out.

A. Right in here.

Q. What is that arm sticking down there?

A. It is the operating lever that turns this quarter-turn valve.

Q. When the operating lever is up which one of these drawings up at the top represents the position of the valve—when the lever is up?

A. This one.

Q. When the lever is up?

A. No, this one here.

Q. Show now where the steam come in there.

A. Comes in right through here, down around through the center—through this opening in the side of the valve out through here and—

(Testimony of Ira Mann.)

Q. When the lever is moved down and the steam exhausts?

A. The exhaust steam comes back through the port in here. There are two ports in this. The cylinder is built like a pot, an inverted pot, no bottom to it; comes out through the under port and passes out through the lower opening in the valve and out into the exhaust line.

Q. Now, does the drawing in the upper right-hand corner indicate the position of the valve when the steam is exhausted within the chamber of the cylinder? A. Yes.

Q. Just describe that cylinder to the jury.

A. As I say, it is built just the same as a pot turned [237—184] upside down and the piston works from the bottom, connecting rod fastened into the bottom; connecting rod come down here fastened to this, pivoted on to this lever and raises the rolls up; that is the way of the downward movement.

Q. How is the cylinder at the bottom, open or closed?

A. Open, just the same as an inverted pot.

Q. What causes the presser-roll to raise?

A. What causes the presser-roll to raise? Steam, in this instance.

Q. I am referring of course to this edger. What cause it to come down? A. Its own weight.

Q. And when it comes down of its own weight what effect does that have on the piston?

A. The piston goes back up to the top of the

(Testimony of Ira Mann.)

cylinder again. It is close to the top that it will admit steam again for the next operation.

Q. In other words, the weight of the presser-roll forces the piston back into its original position?

A. Yes.

Q. Now, after it gets back into its original position, is there any steam applied from anywhere to press this presser-roll down onto the lumber?

A. Absolutely not.

Q. When a presser-roll once starts to come down and the steam is escaping through the exhaust, is there any way that presser-roll can be held up part way? A. Yes, sir.

Q. How is that? [238—185]

A. By having a heavier intake of steam than the discharge through the exhaust. In other words, by closing the valve so that the steam pressure will come on it with sufficient force to hold what—to hold it up there, faster than it will release through the exhaust.

Q. Is that possible with this kind of valve?

A. Any type of valve. If you will apply the live steam you can check the valve at any point of the stroke, by applying the live steam faster than you let the discharge or exhaust steam escape. In other words, you can form a cushion that you can control it there by.

Q. Now, will you state to the jury whether the intake and exhaust ports are the same size in a valve?

A. As near as I remember, they are.

(Testimony of Ira Mann.)

Q. They are both a fixed size in the valve itself, the way it is made, are they not? A. Yes.

Q. Now, will you just explain to the jury how it would be possible for more steam to be admitted through one port than would escape through the other?

A. By the aid of your lever, you open your live steam port to a heavier angle than your exhaust steam port will escape. That way it forms a cushion in your cylinder and you could check it anywhere you wanted. But it takes a fellow who knows his business to do it, I tell you that.

Q. Have to make a special effort to do that, wouldn't you? A. Naturally.

Q. Now, assuming that the presser-roll has once started to descend and is touching the lumber, would anything hold it in that position without letting it rest firmly on the [239—186] lumber?

A. I don't believe I understand the nature of your question.

Q. Suppose the edger-man left the presser-rolls down on top of the lumber so that it is touching the lumber. Is it possible to hold them there touching the lumber so that their full weight is not resting upon the lumber? A. I don't think so.

Cross-examination.

(Questions by Mr. MOULTON.)

It is as possible to hold them one sixty-second of an inch above the lumber as it is to hold them five inches, isn't it?

A. If you are smart enough you can do it.

(Testimony of Ira Mann.)

Q. If your valve just gets in the right position you will have it leaking steam in and letting steam out at the same time, won't you?

A. You can, yes. In other words, what is understood in engineering parlance, as bleeding.

Q. Yes. In other words, if the valve is bleeding it may be where supposed to release steam quickly when the lever is brought down; it may not do right at all? A. Yes.

Q. And they may just leave it in such state that unless you lift the lever up it won't actually lift the rolls but no matter where you put the lever there will alway be some pressure down on the piston. A. If you leave sufficient steam in, yes.

Q. But if your valve is bleeding— [240—187]

A. It would have to bleed pretty lively to do that, young man.

Q. Yes, it would be apt to be, maybe. If the rolls wouldn't come down freely it would mean the valves were bleeding, wouldn't it?

A. Yes, I would say so.

Redirect Examination.

(Questions by Mr. KING.)

There is another question, Mr. Mann, I forgot to ask you. What position do you hold with the Oregon-American Lumber Company at Vernonia?

A. I wouldn't—I don't know as I have any official position there.

Q. What kind of work do you do?

A. I see after the steam end of the mill.

(Testimony of Ira Mann.)

Q. Overlook the steam-line? Have you been called upon to adjust the valve of this edger?

A. I probably have been, a few times.

Q. Was that before Mr. Simpson was hurt?

A. No.

Q. How long after he was hurt, was it?

A. I haven't the least idea. I don't think I ever—I don't think I ever adjusted that valve more than once, maybe twice, in the last ten months.

Q. In the past how many? A. Ten.

Q. Ten months? A. Yes, sir.

Q. And would you say that the first occasion was a month after Mr. Simpson's accident, or how long?

A. I have no idea. [241—188]

Q. No idea at all? A. No, sir.

Q. Might have been one day? A. Sir?

Q. Might have been one month, you say?

A. It might have been.

(Questions by Mr. ILLIDGE.)

Do you remember the occasion of Simpson's injury? A. I do not.

Q. Were you at the mill at the time Simpson met his injury?

A. I was there, but not on that floor.

Q. You were working for the mill but not on that floor? A. No.

Q. And at the time you had charge of the steam-line? A. Yes.

Q. If there was anything wrong with this valve at that time, would you be called to remedy it?

(Testimony of Ira Mann.)

A. I certainly would, and it was not reported to me.

Q. You say it was not reported to you?

A. No, sir.

Q. Then do I understand that you were not called upon to make any adjustment of that valve immediately after Simpson's death?

A. Indeed not. I had no report as to its being out of order if it was, and had it been out of order I certainly would have been called on.

Recross-examination.

(Questions by Mr. MOULTON.)

You do know there was trouble with that valve, though, at some time? A. Do I know what?

Q. You know that they did have trouble with that valve, don't you? [242—189] A. No.

Q. Didn't you know that valve was in such shape that it wouldn't let the rolls down on the lumber freely? A. Not reported to me at that time.

A. When was it reported to you that the rolls were sticking?

A. Well, after Mr. Simpson was reported hurt to me, I guess a month, maybe longer than that, they reported to me that the rolls—that the cylinder wasn't acting right, and I went up and adjusted the valve.

Q. Adjusted it? A. Yes.

Q. So it would act right? A. Yes.

Q. But you don't remember how long that was after Simpson was hurt, do you?

(Testimony of Ira Mann.)

A. No, sir. To tell the truth I haven't much recollection of the time.

Redirect Examination.

(Questions by Mr. KING.)

Just what was that adjustment you made?

A. I moved these—there is a little set screw on this handle; by moving that set screw and turning the—you have a valve there, I will show you. Here is a pin that sets in the socket of the valve. By moving that handle on there you can adjust it so that it will close the port more or less. That is all there is to it. The edger-man in operating lots of times that screw may get loose and it requires adjustment from time to time. Any time that set screw gets loose on that rod it necessitates resetting that valve. [243—190]

Q. Resetting the valve on the inside?

A. Yes. Necessitates resetting it so it will close the port properly and open it to the proper position where when it is closed the exhaust ports will be well free, you see.

(Questions by Mr. ILLIDGE.)

Is it your duty, Mr. Mann, to look over that valve very often?

A. I never look at it unless reported to me.

Q. If reported out of order?

A. If reported out of order, then I look at it.

Q. Is it clear in your memory it was not reported to you out of order at the time of Simpson's injury? A. Absolutely.

Witness excused. [244—191]

TESTIMONY OF TROY SMITH, FOR DEFENDANT.

TROY SMITH, a witness called in behalf of the defendant, being first duly sworn testified as follows:

Direct Examination.

(Questions by Mr. ILLIDGE.)

Will you state your name—what is your age?

A. Forty-seven years, or about that.

Q. What is your occupation?

A. Saw mill foreman for the Oregon-American Lumber Company.

Q. At what place? A. Vernonia, Oregon.

Q. How long have you been sawmill foreman?

A. Ever since the mill started up.

Q. When was that?

A. Well, the date is something I don't know.

COURT.—The record shows July 8th.

A. I wouldn't dispute the fact when it started, for I really don't know. I was there a month before it started.

Q. What experience have you had in sawmill work?

A. I have been at it ever since I was big enough to work.

Q. Well, about how many years, do you believe?

A. Well, I could safely say twenty-five years, I could substantiate that.

Q. Are you familiar with the Filer & Stovel machinery? A. Yes.

Q. Have you worked in mills where Filer &

(Testimony of Troy Smith.)

Stovel machinery was installed, prior to working at the Oregon-American? A. Yes. [245—192]

Q. How many years experience might you have had with Filer & Stovel machines?

A. Sixteen years.

Q. And for that length of time would that cover edgers as well? A. No, sir.

Q. About how many years experience with edgers?

A. Eight years.

Q. About eight years experience where they had Filer & Stovel edgers? Mr. Smith will you please explain to the jury the operation of putting a board through the edger? Explain in your own way just the necessary moves that you make and what occurs. Refer to these diagrams if you desire.

A. Well, the chart there only shows the edger. The boards come down this roller case. A bumper on the roller case that stands up all the time unless —there is a pedal here and one here connected to the same lever. If there is a timber or slab coming down this roller case, coming on here, this fellow can put his foot here or here on this pedal and that bumper stays down until that timber or slab goes over, frees the bumper; he takes his foot off, and the bumper comes back up, standing there and that automatically—that being the edger—when this board hits that bumper there is skids in here or chains which handle the shaft under here; steam cylinder below. He has a pedal here and here and here, three pedals. If he is cutting anything under thirty-two foot lumber he will handle this pedal

(Testimony of Troy Smith.)

with this one. If cutting forty foot, of course, has to handle this back pedal, owing to the length that goes down there. That raises these skids and dumps out on this chain and running one set of them this way; and some pointers that raises about four inches, [246—193] setting up and catches this timber. When the edger-man wants to put that timber or board through the edger, he is standing there. He has a pedal there; he has two, —when he handles this chain and when he handles this. He presses that pedal and lowers the pointer and raises the chain, pulls this timber over. If not in line when them pointers raise—these chains running that way—he can pull it around until gets up to these pointers; lined up then to be admitted into the edger; raises his rolls and it goes through the edger.

Q. Now, what raises the rolls, what operation?

A. Well, there is a cylinder there. This is a lever. He raises this lever; that raises his roll to admit the lumber.

Q. And then what do these rolls do over here?

A. They are press-rolls.

Q. What do they do? What are their duties?

A. To hold the lumber down so it can be fed through.

Q. The upper roll, the presser-roll on each side of the edger—after the piece of lumber has passed, say, is held down by both rolls?

A. This one catches it before it hits the saw, gets to the saw. If this one is down that one is certain

(Testimony of Troy Smith.)

to be down. It catches it and carries it; a set of rolls behind keeps it going.

Q. State to the jury, if you know, whether the rolls are raised by steam or not?

A. They are raised by steam, yes, absolutely.

Q. And in what way are the presser-rolls let down?

A. They cut the steam off, cut the steam off and it releases [247—194] through that port, lets those rolls down.

Q. When they cut the steam off do I understand you to mean they move this lever down?

A. The edger-man always picks the lever up and holds it up like this, until the board or timber enters under these rolls. And he turns the lever loose and that lever comes on home, hangs down just about like that. There is a strap down there for it. The steam is cut off and released; while this board is going through them rolls are still up, and after this board goes through the rolls drop.

COURT.—Goes through what?

A. Goes through the edger. This board goes through, goes through the edger.

Q. Now, you say that he raises the lever, the edger operator raises the lever and raises the presser-rolls, the board enters the edger, then he drops the lever and leaves go of it, and it will come back of its own accord to close position?

A. Comes back down.

Q. Comes as far down as it is permitted to come,

(Testimony of Troy Smith.)

and when that comes down does that permit the roll, the presser-roll to come down on the timber?

A. The presser-rolls are already down; that weight on them. There is no steam holding them up, and stay that way and as this timber goes on through here and comes out the other side them rolls drop of their own accord.

Q. They drop first, do they, on the timber?

A. Yes. [248—195]

Q. And when the timber is entirely through they drop off the timber? A. Yes.

Q. How close do they come together?

A. Well, at the present time coming about three-eighths of an inch.

Q. Three-eighths of an inch. They never been down hitting the other rolls?

A. We have to take these rolls out and stretch them a little; they are swung; and an eighth of an inch on these rods here will take up about a quarter of an inch down there; a good deal further from here to that center, than from there to this center.

Q. Do you know whether a timber will go through the edger without the presser-rolls being down at all?

A. I don't know whether a timber will. I know a board will.

Q. What size, what dimensions?

A. One I can get through.

Q. What would be the largest you can get through?

(Testimony of Troy Smith.)

A. I can get—I know we can get six feet through a seven-foot edger.

Q. So a board one inch thick and seven feet wide, you say, would go through with how many saws cutting?

A. Well, he has six saws, has eight saws in that edger; the edger uses six saws.

Q. With eight saws cutting you can go through with boards, too?

A. I never tried that big. I have tried going through for twenty-four, but not above that.

Q. One to twenty-four, you have tried that?

A. Yes. [249—196]

Q. So that will go through?

A. Yes. Of course go through slow, doesn't go through fast.

Q. Feeds it faster with presser-rolls down. Mr. Smith, what causes the edgers to kick back?

A. In my opinion and experience there are three causes.

Q. Please state them.

A. One is hot saw; slivers getting in behind the guide.

Q. Any way to prevent that, that you know of?

A. No, sir I have never found any way.

Q. And the next cause?

A. That sliver heats your saw. The next cause, if a cant comes through with a round side, say something similar to this twenty-four inches, have three saws in that cant, one saw here, another saw here; this is a round side cant; when it comes there,

(Testimony of Troy Smith.)

cut the edge there to you; the other part of the saw back there; it might turn over and hit the side of that saw and come out.

Q. In other words, a slab try to swerve to one side and would break it?

A. It would turn over, wouldn't set up; would be heavier on the back and turn over. If that is eight inches and that saw ain't set over eight inches —that saw was six inches, and this cant is six, if it turned over in a quartering position it will hit that saw and the saw running, it will knock it up.

Q. If I understand, the edger-man in setting his saws, he wants to set his saws the proper distance so the saws, the other saws want to be set over to one side out of the way. Is that it? [250—197]

A. Usually that is the way.

Q. So they will not hit the edge that might be sticking out?

A. Any edge of the boards. He wants to get the end of the board going down there. He will want to—if he has an order for one by twelve clear, he will set the saw twelve inches to split off that board; and set the saw four inches, that is as close as you can set it; this one six inches; then maybe a two-inch strip on the outside; sometimes waste a piece inside the bark.

Q. You have one cause, the saws heating; another cause, where the edge might stick over far enough to hit the side of the saw. What is the third reason for kicking back?

A. Split up as running under—splitting and

(Testimony of Troy Smith.)

turning back under the board, throw back to the feed-roll.

Q. You are familiar with the construction of the Oregon-American Lumber Company's mill?

A. I am, yes.

Q. What is the drop—in the first place, does the edger itself set on the main floor level? A. Yes.

Q. Then is there a drop in the floor after it passes the edger? A. Yes.

Q. Do you know what that drop is?

A. I don't.

Q. Can you give a fair estimate of what that drop is?

A. Well, I estimate in my notion it would be eighteen inches. That is as near as I would come at estimating.

Q. Does the drop come in the floor right after it is past the edger? A. Yes.

Q. How soon after passing the edger? [251—198]

A. The drop—the edger floor comes out this way; the edger sets here; this drop comes down here; I would say eighteen inches right past the edger.

Q. Are you familiar with the edger-tailer's position? A. Yes, sir.

Q. In doing his work is he standing up straight or stooping over the table?

A. Well, he doesn't stoop much. I wouldn't say that he wouldn't stoop any. Ordinarily I think he stoops a little.

Q. From your knowledge of the condition there,

(Testimony of Troy Smith.)

in your opinion can the tailer man, the edger-tailer, see what is happening in front of the edger?

A. Well, he couldn't see low down, no.

Q. Well, what could he see? Have you ever occupied that position? A. No, sir.

Q. Have you been in front of the edger in the position of line-up man?

A. I never worked in that position. I am there every day, yes, some part there.

Q. When in that position, position similar to the one Mr. Simpson was in when he was injured, could you see the tailer of the edger?

A. I can by stepping sideways and looking down. You can see his head; but they usually look right side of the edger; the tailer does look down.

Q. Do I understand you can't look over the edger, you have to look to the side of it?

A. If you see him up to his head you would, yes, sir.

Q. Now, the tailer, he has a fixed position between the [252—199] rolls, has he not?

A. Yes, he has a position; he goes from one side of the rolls, goes to the other.

Q. Would it be possible for him in this position to look around the edger?

A. Yes, he can come over to this side, and his roller case is as wide as this edger, and look back there, if the edger-man was not in the way.

Q. How wide is his edger?

A. Well, it is seven foot inside the frame; I

(Testimony of Troy Smith.)

would say seven foot eight or ten inches would cover over all. That is an approximate estimate.

Q. The tailer's position is it about the center line of the edger, or more to one side?

A. He has two of these; double edger. The lumber comes from the gang on this side and from the head rig on this side. He stands in the middle, puts his slabs over the slasher, we will say thirty-two feet at least from the edger-tailer, and he can go on either side; if nothing in the way he usually stays in the center.

Q. If the edger-man is in the usual position in the center and the edger itself, the machine, is thirty-two feet from him, and he wants to see something directly back, or there is something happening directly back of that edger, and the edger is seven feet wide, isn't he looking over, or is he not looking on an angle?

A. The spotter always watches his edger.

Q. I am speaking of the tailer.

A. The tailer, I mean. He is always watching that edger. [253—200]

Q. Watching the edger itself?

A. Watching the edger-man and usually the edger. If he don't will get something run through him; it is dangerous.

Q. His position is a dangerous one?

A. Well, anybody that holds that position.

Q. Lots of opportunity to get hurt there?

A. Lots if you don't watch out.

Q. In other words, the tailer—the edger-tailer

(Testimony of Troy Smith.)

has to watch these boards coming through there pretty closely?

A. He watches every piece coming so he is out of the way, if one should get knocked crossways. I have never seen a tailer work in there a month that didn't have to climb out and get out of the way sometimes on account of a piece coming crossways; coming down he watches the edger and gets out; that is why he has to do it.

Q. This tailer has to watch these boards coming through pretty closely? A. Yes, sir.

Q. Particularly when a board is coming through?

A. Yes.

Q. Would he have to watch a board closely if a thirty-foot piece coming through and have twenty-eight or nine foot through?

A. Yes, the chances are it would be right down about here then.

Q. Would have to be watching that board, or not?

A. Sometimes they throw them off and still keep watching for the next one. He can look in any direction, and usually looks the way his lumber is coming, in fact all the time, I would say.

Q. You are acquainted with Nye? A. Yes. [254—201]

Q. Why did Nye leave his employment, do you know?

Mr. MOULTON.—I object to that.

COURT.—You ask him about that while on the

(Testimony of Troy Smith.)

stand. Suppose would be competent if he was discharged.

Mr. MOULTON.—All right. I withdraw the objection.

A. Mr. Nye left of his own accord, he and his brother. They told me going up in Idaho; the climate didn't very well suit him, and I had him work another day after he quit, to finish up the day. He left on good terms.

Cross-examination.

(Questions by Mr. MOULTON.)

What is the offset in the mill floor for?

A. For slasher; for slabs.

Q. It doesn't extend down to the tailer's station, does it? A. Yes, sir.

Q. The tailer, as he stands on that floor, is on the same level as the edger, isn't he?

A. Well, I will say the edger-man will be thirty inches; from the floor up here, would be thirty inches to the edger-man; about thirty-four inches to the top of the saw collar; these rolls below there are level; and then he is down, I will say, twenty-four to twenty-six inches. I wouldn't swear; would put him down—I think it would figure out were practically the same level. There might be a little difference.

Q. Just about the same. The picture here, Defendant's Exhibit "B," shows the situation, doesn't it? A. Well, it appears to. [255—202]

Q. There is a man blurred in the background of

(Testimony of Troy Smith.)

the picture there. Do you recognize that man standing there? Who is it?

A. I would have to study that.

Q. Isn't that a man in the background of the picture? It is blurred and dark.

A. Yes, that is the edger-tailer.

Q. That is the edger-tailer at his station, isn't it?

A. Yes.

Q. Now, let's point that out to the jury if we can see. So the fact of the matter is, the edger-tailer from his station can see and watch the edger-man and practically see all the edger-man's body, can't he?

A. If the edger-man on the side. You see that edger extends up a great deal higher than the saws. That man is in at least the middle of the edger.

Q. The edger-man's position as he operates the edger, is right by it, has to look the way the lumber comes in?

A. Yes, he is on the right of the machine.

Q. And it really doesn't interfere much—the edger doesn't interfere much with the view the edger tailer man has of the edger-man?

A. Unless the edger-man is setting saw. If he is, the tailer cant see.

Q. If in front to set the saws, then he would be out of sight of the edger-tailer. Is that right?

A. Yes, sir.

Q. Otherwise would be in plain sight of the edger-tailer all the time? [256—203]

(Testimony of Fred L. Nye.)

A. Because he is outside between them.

Witness excused.

Defense rests. [257—204]

TESTIMONY OF FRED L. NYE, FOR PLAINTIFF (RECALLED IN REBUTTAL).

FRED L. NYE, recalled in rebuttal, having been previously sworn testified as follows:

Direct Examination.

(Questions by Mr. MOULTON.)

Mr. Nye, is the station of the edger-tailer where you worked on any different level than the floor on which the edger-man stands?

A. No, it isn't. Not as near as you can see with the eye, it isn't.

Q. In your experience operating edgers, can you tell when the saw is getting hot?

A. You can if it starts to wobble.

Q. How do you tell, by seeing or hearing it?

A. Yes, can see when he goes to the edger to put in the timber.

Q. Can you hear it? A. No.

Q. Can you distinguish any difference in the sound? A. No, I can't, not whatever.

No cross-examination.

Witness excused. [258—205]

TESTIMONY OF CHARLIE FISHER, FOR PLAINTIFF (RECALLED IN REBUTTAL).

CHARLEY FISHER, recalled in rebuttal, having been previously sworn testified as follows:

Direct Examination.

(Questions by Mr. MOULTON.)

Have you ever had any experience with edger saws getting hot?

A. Well, I have been around them when getting hot, yes.

Q. Can you tell when getting hot?

A. They have a different hum when getting hot, than when running cool.

Q. Can you tell the sound of them when running hot? A. Yes, can tell the sound, at least I can.

Witness excused.

Plaintiff rests.

Defendant rests. [259—206]

Mr. KING.—At this time, your Honor, the defendant moves the Court for an order directing a verdict in favor of the defendant and against the plaintiff, upon the following grounds: First, that the plaintiffs have not offered any evidence tending to establish any of the charges of negligence alleged in the complaint. Second, that the plaintiffs have not proven their case sufficient to be submitted to the jury. Third, that the plaintiffs have not offered any evidence tending to prove or establishing that the negligence alleged in the complaint was the

direct and proximate cause of the injury to Claud Clyde Simpson, the deceased.

* * * * * * * * * * *

Argument of counsel.

Whereupon proceedings herein were adjourned until ten o'clock to-morrow morning. [260—207]

Monday, June 15, 1925. 10 A. M.

COURT.—In regard to the motion made for a directed verdict, in view of the conclusions that I have reached, it will be unwise and improper to comment or refer to the testimony, or my conclusions or any other conclusions that may be drawn therefrom. It is enough that in my judgment there is evidence sufficient to take the case to the jury upon the question of the defendant's negligence, whether the defendant was negligent as charged in the complaint, and if so, whether such negligence was the proximate cause of Simpson's injury, and the motion will be overruled.

Mr. KING.—Will your Honor kindly allow us an exception.

Argument to the jury. [261—208]

In the District Court of the United States, for the District of Oregon.

MABEL SIMPSON and WAYNE DEAN SIMPSON and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian Ad Litem,

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

INSTRUCTIONS TO THE JURY.

R. S. BEAN, District Judge:

Gentlemen of the Jury: This is an action brought by Mrs. Simpson and her children against the Oregon-American Lumber Company to recover damages for the death of the husband and father, which it is alleged was due to the negligence of the defendant company. The plaintiffs have alleged the particular negligence upon which they rely, and upon which they must recover in this case if they recover at all, and the negligence charged is that the defendant carelessly and negligently permitted the edger and the device for lifting the dead rolls to be out of repair and in a dangerous condition in this, that the valve admitting and releasing the steam into the cylinders for the purpose of operating the pistons and lifting the dead rolls, had been permitted to be and [262—209] remain in such condition through defect in the adjustment thereof that the same would not open and close freely, and that

when the steam had been admitted into the cylinders and the rolls had been lifted and the valves were released for the purpose of permitting the rolls to drop upon the lumber being cut in the edger, the valves would not properly release the steam from the pistons and the rolls were thereby left partially or completely lifted and were prevented from descending on the lumber with sufficient force to hold the same firmly in position to cause the same to be driven against the saw in a straight course, and such lumber was by reason thereof apt to stop while being driven against the saw, and to bind upon the saw, and to be thrown thereby with great force to the front part of the mill. That is the particular negligence charged in this complaint, and upon which the plaintiff seeks to recover. This is denied by the defendant company. The burden of proof is therefore upon the plaintiff to satisfy you by a preponderance of the evidence in the first place, that the defendant company was negligent in the particulars specified in the complaint. If they have failed to sustain such burden they are not entitled to a verdict. And by preponderance of the evidence I simply mean that they are required under the law to make out the best case on that question. If you believe the evidence is evenly balanced, then they have not satisfied the law, and the findings will have to be in favor of the defendant. [263—210]

Now, it is not necessary for the plaintiff to prove negligence beyond a reasonable doubt. This is a civil case, and all that is required of the party holding the affirmative of an issue is to satisfy the jury

by a preponderance of the evidence, by the burden of proof.

Now, the defendant is not an insurer of the safety of its employees. It does not guarantee that an employee will not be injured, and therefore there would be no ground for recovery and no right to recovery in this case if it appears from the testimony that this was a mere unavoidable accident for which no one was responsible, or if it was an injury or an accident for which the defendant was not responsible.

In order that the plaintiffs may recover therefore they must satisfy you by a preponderance of the evidence that the injury to the deceased was due to the neglect of some duty which the defendant owed to him, and the plaintiffs can only recover on the grounds of negligence alleged in the amended complaint, and those I have called to your attention.

If they have not satisfied you by a preponderance of the evidence that the defendant was guilty as charged, your verdict should be for the defendant, even though you should believe that there was negligence in some other respect. So that upon this matter of negligence the question is whether the valves on these edgers were defective as charged in the amended complaint, and if you are satisfied by a preponderance of the evidence that the valves were defective as charged, and that by reason of [264—211] such defect they would not permit the dead rolls to come down sufficiently on the lumber, then that would constitute negligence. But if you do not believe that the valves were defective in the manner

charged in the complaint, you would not be justified in finding in favor of the plaintiffs, even though you should think the edger-man or someone in charge of the edger was responsible for the injury. First you must find whether or not the valves were defective as charged in the complaint, and find that from the preponderance of the evidence.

If you do so conclude, then it will be necessary for you to determine whether or not the defective valves was the cause or the proximate cause of the injury to the deceased. The mere fact, if it is a fact, that the defendant company was negligent in allowing the valves to get out of repair, if they were out of repair, would not justify a verdict in favor of the plaintiffs, unless it further appears that that defect was the proximate cause of the injury. And by proximate cause I simply mean a cause which in its natural sequence produces the injury, and which ought to have been foreseen by a person of ordinary prudence as likely to produce an injury. There must be a causal connection between the negligence and the injury in order to justify a recovery.

And again, if it appears from the testimony in the case that the injury to Simpson was due wholly to his own fault, then of course these plaintiffs would not be entitled to recover at all. And what I mean by that is [265—212] this: Under the law upon which this case is being tried, what is known as contributory negligence is not a defense, but under certain circumstances and when pleaded, may be taken into consideration by a jury in estimating the amount of damages, but contributory

negligence presupposes negligence of both parties. It means that the defendant is negligent and that the plaintiff is negligent—the deceased is negligent. And therefore what I mean in this last charge is that if it appears that the defendant was not negligent as charged in the complaint, but that the injury to Simpson was due to his own negligence or his own carelessness, of course the plaintiffs would not be entitled to recover, because they have not sustained the allegations of the complaint, and have not shown to the satisfaction of the jury that the injury to Simpson, from which he died, was due to the negligence of the defendant company, or it was not the proximate cause of his injury.

Now, then, if you conclude from the preponderance of the evidence that the defendant company was negligent as charged in the complaint, and that the valves were in fact out of order, and by reason of that fact the rolls would not come down solidly upon the lumber that was passing through the saw, and that by reason of that fact the injury from which the deceased died, occurred—I say if you find these issues in favor of the plaintiffs, then it will be necessary for you to determine the amount of the damages which they should recover in this case. Now there is no hard-and-fast rule the Court can give you or state to you, by which you should be governed in arriving [266—213] at a conclusion as to the amount of the damages. When it comes to a question of measure of compensation for a personal injury or for the death of an individual, there is no rule of law, no fixed standard by which a jury

can be guided, and therefore the matter is left to the sound judgment and discretion of the jury. That is the only way the law recognizes or known to the law by which such questions can be determined. In this case the rule of law covering the measure of damages is that it must be limited to the net amount which Simpson would probably have saved from his earnings in his trade or work, taking into consideration his age, health, ability, habits of industry and mental and physical ability as far as they affected his capacity for earning money and rendering service to others, or accumulating property. The question of pain and suffering, if any, that he may have sustained after the injury and prior to his death, is not to be taken into consideration, nor are you to be influenced in any way by sympathy which you may have for his family, for his widow or his minor children. These matters are not to be considered by a jury in determining the amount of recovery in this character of case, but it is simply what you may think, under all the evidence, would be, as the Supreme Court of this state puts it, "the net amount which he would probably have saved from his earnings, taking into consideration his age and his earning capacity and his probable length of life," and from all of it [267—214] determine what you can say you think would be a fair recovery in this case. And that is the best I can do in advising you as to the rule by which you shall be governed in arriving at your verdict, if you reach the question of damages. It should be based on the real substantial evidence in the case, and should be

such sum as would be a fair compensation for the life of the deceased, the net result of his work during his probable life.

Now, you are the exclusive judges of all questions of fact in this case. You are the exclusive judges of the credibility of the witnesses.

The Court overruled a motion for a directed verdict in your presence. You are not to conclude from that that in the judgment of the Court the plaintiffs are entitled to recover. That motion simply raised the question of law as to whether there had been any evidence sufficient to submit this case to the jury, but the Court did not undertake to decide any disputed fact in the case, because it has no right to do so. It has no more right to invade your province and undertake to determine a question of fact, than you have to invade its, and determine questions of law. The responsibility of the conclusion in this case rests with the jury and not with the Court.

Now, something has been said about the State Compensation Law. Under that law employers are permitted or are allowed, if they so elect or so desire, to elect not to contribute to and come under the provisions of the act. If they do so elect, then they are liable in cases of this [268—215] character and are deprived by the law of certain defenses which it is not necessary to state here. This case is to be determined upon the facts and the evidence as given on the trial, and the law as given to you by the Court, regardless of the fact that it has elected not to come under the Compensation Act.

That is a privilege accorded by law, and when it made such election the defendant is entitled to have this case tried upon the issues and law as presented.

Jury retires. [269—216]

In the District Court of the United States, for the District of Oregon.

MABEL SIMPSON and WAYNE DEAN SIMPSON, and JOYCE SIMPSON, Minors, by MABEL SIMPSON, Their Guardian ad Litem.

Plaintiffs,

vs.

OREGON-AMERICAN LUMBER COMPANY, a Corporation,

Defendant.

I, Mary E. Bell, hereby depose and say that I acted as official reporter for the trial of the above-entitled case in the above-entitled court, on the 11th day of June, 1925 et seq., and that I took down in shorthand all of the testimony, motions and rulings at said trial and that the foregoing is a full, true and accurate transcript thereof, as I verily believe.

[Seal] MARY E. BELL,
Notary Public for Oregon.

My commission expires March 19, 1929. [270]

CERTIFICATE OF JUDGE TO BILL OF EXCEPTIONS.

The foregoing bill of exceptions contains all the evidence upon the trial of this action and relating

to the foregoing exceptions, and that the exhibits be deemed a part of the bill of exceptions and be attached hereto.

The attorneys for the plaintiff in error, the defendant below, having thereupon tendered this as defendant's bill of exceptions to the rulings of the Court upon the trial of this action, and having requested that the signature and seal of the trial Judge aforesaid should be annexed to the same pursuant to statute in such case made and provided, and forasmuch as none of such matters and exceptions so offered and made to the rulings and directions of said Judge, and none of the evidence and other things do appear on the record of said case, the said Judge, pursuant to said request, did put his signature and seal to this bill of exceptions this 24th day of July, A. D. 1925, and orders the same placed on file.

(Sgd.) R. S. BEAN,
Trial Judge.

District of Oregon,
State of Oregon,
County of Multnomah,—ss.

Service of the foregoing bill of exceptions is hereby admitted by the receipt within the district, state and county aforesaid of a duly certified copy this 24th day of July, A. D. 1925.

WM. P. LORD,
One of Attorneys for Plaintiffs. [271]

Filed July 25, 1925. G. H. Marsh, Clerk.

AND AFTERWARDS, to wit, on Thursday, the 27th day of August, 1925, the same being the 46th judicial day of the regular July term of said court,—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [272]

In the District Court of the United States for the District of Oregon.

No. L.–9520.

August 27, 1925.

MABEL SIMPSON et al.,

vs.

OREGON-AMERICAN LUMBER COMPANY.

MINUTES OF COURT—AUGUST 27, 1925—ORDER DIRECTING FORWARDING OF ORIGINAL EXHIBITS.

Now, at this day on application of the attorney for defendant, it is ORDERED that the original exhibits introduced in evidence at the trial of this cause be forwarded by the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit as a part of the transcript of record on writ of error in said cause.

CHAS. E. WOLVERTON,
Judge.

Filed August 27, 1925. G. H. Marsh, Clerk. [273]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, pursuant to the annexed writ of error and in obedience thereto, do hereby certify that the foregoing pages, numbered from 7 to 273, inclusive, constitute the transcript of record upon said writ of error in a case in said court in which Mabel Simpson, and Wayne Dean Simpson, Earl Simpson and Joyce Simpson, minors, by Mabel Simpson, their guardian *ad litem* are plaintiffs and defendants in error, and Oregon-American Lumber Company, a corporation is defendant and plaintiff in error; that the said transcript has been prepared by me in accordance with the praecipes for transcript filed by said plaintiff in error and by defendants in error and is a full, true and complete transcript of the record and proceedings had in said court in said cause, in accordance with the said praecipes, as the same appear of record and on file at my office and in my custody.

I further certify that the cost of the foregoing transcript is $43.50 and that the same has been paid by the said plaintiff in error.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Portland, in said district, this 27th day of August, 1925.

[Seal] G. H. MARSH,
Clerk. [274]

[Endorsed]: No. 4680. United States Circuit Court of Appeals for the Ninth Circuit. Oregon-American Lumber Company, a Corporation, Plaintiff in Error, vs. Mabel Simpson and Wayne Dean Simpson, Earl Simpson and Joyce Simpson, Minors, by Mabel Simpson, Their Guardian *ad Litem,* Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Oregon.

Filed August 31, 1925.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.